FEDERAL RESERVE BANK
OF DALLAS

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

DALLAS, TEXAS
75265-5906

September 25, 1995

Notice 95-90

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

SUBJECT

Final Amendments to the Risk-Based and Leverage Capital Adequacy Guidelines

DETAILS

The Board of Governors of the Federal Reserve System has issued amendments to the capital adequacy guidelines for state member banks and bank holding companies (banking organizations) with regard to the regulatory capital treatment of certain transfers of assets with recourse.

The amendments implement section 208 of the Riegle Community Development and Regulatory Improvement Act of 1994. The final rule would have the effect of lowering the capital requirement for small business loans and leases on personal property that have been transferred with recourse by qualified banking organizations.

ATTACHMENT

A copy of the Board's notice as it appears on pages 45612-16, Vol. 60, No. 169, of the *Federal Register* dated August 31, 1995, is attached.

MORE INFORMATION

For more information, please contact Dorsey Davis at (214) 922-6051. For additional copies of this Bank's notice, please contact the Public Affairs Department at (214) 922-5254.

Sincerely yours,

Robert D. McTeer, Jr.

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)

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–0870]

Capital; Capital Adequacy Guidelines

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is amending its risk-based and leverage capital adequacy guidelines for state member banks and bank holding companies (collectively, banking organizations) to implement section 208 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act). Section 208 states that a qualifying insured depository institution that transfers small business loans and leases on personal property with recourse shall include only the amount of retained recourse in its risk-weighted assets when calculating its capital ratios, provided that certain conditions are met. This rule will have the effect of lowering the capital requirements for small business loans and leases on personal property that have been transferred with recourse by qualifying banking organizations.

EFFECTIVE DATE: September 1, 1995.

FOR FURTHER INFORMATION CONTACT: Rhoger H Pugh, Assistant Director (202/728–5883); Norah Barger, Manager (202/452–2402); Thomas R. Boemio, Supervisory Financial Analyst (202/452–2982); or David A. Elkes, Senior Financial Analyst (202/452–5218), Division of Banking Supervision and Regulation. For the hearing impaired *only,* Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION:

Background

The Board's current regulatory capital guidelines are intended to ensure that banking organizations that transfer assets and retain the credit risk inherent in those assets maintain adequate capital to support that risk. For banks, this is generally accomplished by requiring that assets transferred with recourse continue to be reported on the balance sheet in their regulatory reports. Thus, these assets are included in the calculation of banks' risk-based and leverage capital ratios. For bank holding companies, transfers of assets with recourse are reported in accordance with generally accepted accounting principles (GAAP). GAAP treats most such transactions as sales, allowing the assets to be removed from the balance sheet.[1] For purposes of calculating bank holding companies' risk-based capital ratios, however, assets sold with recourse that have been removed from the balance sheet in accordance with GAAP are included in risk-weighted assets. Accordingly, banking organizations are generally required to maintain capital against the full amount of assets transferred with recourse.

Section 208 of the Riegle Act, which Congress enacted last year, directs the federal banking agencies to revise the current regulatory capital treatment applied to depository institutions engaging in recourse transactions that involve small business obligations. Specifically, the Riegle Act states that a qualifying insured depository institution that transfers small business loans and leases on personal property (small business obligations) with recourse need include only the amount of retained recourse in its risk-weighted assets when calculating its capital ratios, rather than the full amount of the transferred small business loans with recourse generally required, provided two conditions are met. First, the transaction must be treated as a sale under GAAP and, second, the depository institution must establish a non-capital reserve in an amount sufficient to meet the institution's reasonably estimated liability under the recourse arrangement. The aggregate amount of recourse retained in accordance with the provisions of the Act may not exceed 15 percent of an institution's total risk-based capital or a greater amount established by the appropriate federal banking agency. The Act also states that the preferential capital treatment set forth in section 208 is not to be applied for purposes of determining an institution's status under the prompt corrective action statute (section 38 of the Federal Deposit Insurance Act).

The Riegle Act defines a qualifying institution as one that is well capitalized or, with the approval of the appropriate federal banking agency, adequately capitalized, as these terms are set forth in the prompt corrective action statute. For purposes of determining whether an institution is qualifying, its capital ratios must be calculated *without regard* to the preferential capital treatment that section 208 sets forth for small business obligations. The Riegle Act also defines a small business as one that meets the criteria for a small business concern established by the Small Business Administration under section 3(a) of the Small Business Act.[2]

To meet the statutory requirements of section 208 of the Riegle Act, the Board issued a proposed rule amending its risk-based and leverage capital guidelines for state member banks (60 FR 6042, February 1, 1995). Although section 208 pertains only to insured depository institutions, the Board also proposed amending its risk-based capital guidelines for bank holding companies in order to maintain consistency among banking organizations in the calculation of regulatory capital ratios.[3]

The proposal noted that in view of the requirement that the preferential capital treatment set forth in section 208 be disregarded for prompt corrective action purposes, the Board expected that it also would disregard the preferential capital treatment for purposes of determining limitations on an institution's ability to borrow from the discount window and that it would consider disregarding this treatment for purposes of determining a correspondent's capital level under the limitations of the Board's Regulation F (limitations on interbank liabilities). The regulations governing these matters are based in part on regulations implementing the prompt corrective action statute. The comment period on the Board's proposal ended on February 27, 1995.

Comments Received

In response to its proposal, the Board received letters from four public commenters consisting of three banking organizations and one banking trade association. All four organizations

[1] The GAAP treatment focuses on the transfer of benefits rather than the retention of risk and, thus, allows a transfer of receivables with recourse to be accounted for as a sale if the transferor (1) surrenders control of the future economic benefits of the assets, (2) is able to reasonably estimate its obligations under the recourse provision, and (3) is not obligated to repurchase the assets except pursuant to the recourse provision. In addition, the transferor must establish a separate liability account equal to the estimated probable losses under the recourse provision (GAAP recourse liability account).

[2] See 15 U.S.C. 631 et seq. The Small Business Administration has implemented regulations setting forth the criteria for a small business concern at 13 CFR 121.101–121.2106. For most industry categories, the regulation defines a small business concern as one with 500 or fewer employees. For some industry categories, a small business concern is defined in terms of a greater or lesser number of employees or in terms of a specified threshold of annual receipts.

[3] The Board did not propose amending its leverage capital guidelines for bank holding companies since all transfers with recourse that are treated as sales under GAAP are already removed from a transferring bank holding company's balance sheet and, thus, are not included in the calculation of its leverage ratio.

supported the Board's proposal to lower the capital requirements for both state member banks and bank holding companies on recourse transactions associated with transfers of small business loans and leases. Three respondents favored extending the preferential capital treatment to other types of assets. Two commenters argued that not applying the preferential capital treatment for purposes of determining an institution's prompt corrective action category, its ability to borrow from the discount window, or limitations on interbank liabilities would diminish the benefits of the proposed capital treatment.

Three respondents noted that under the proposal, capital would be required to be maintained for the entire amount of recourse retained while further requiring that a liability reserve be established for expected future losses associated with the recourse arrangements. These commenters stated that this requirement would result in a partial duplication of capital charges and, accordingly, argued that the retained recourse liability should be reduced by the amount of the reserve before calculating capital requirements.

Final Rule

After consideration of the comments received and further deliberation on the issues involved, the Board is implementing section 208 of the Riegle Act by adopting a final rule amending the risk-based and leverage capital guidelines for state member banks. In general, the final rule reduces the amount of capital that banking organizations are required to hold against small business obligations transferred with recourse. The final rule provides that qualifying institutions that transfer small business obligations with recourse are required, for risk-based capital purposes, to maintain capital only against the amount of recourse retained and, for leverage ratio purposes, are not required to maintain any capital at all against such obligations transferred with recourse, provided two conditions are met. First, the transaction must be treated as a sale under GAAP and, second, the transferring institutions must establish, pursuant to GAAP, a non-capital reserve sufficient to meet the reasonably estimated liability under their recourse arrangements.

As proposed, to maintain consistency in regulatory capital calculations among the banking organizations, the Board is also issuing a parallel final amendment to its risk-based capital guidelines for bank holding companies. The Board notes that the final rule, consistent with section 208 and its proposal, applies only to transfers of obligations of small businesses that meet the criteria for a small business as established by the Small Business Administration. The Board also notes that the capital treatment specified in section 208 and in this final rule for transfers of small business obligations with recourse takes precedence over the capital requirements recently implemented for transactions involving low levels of recourse.

In setting forth this final rule, the Board has considered the arguments made by commenters for reducing the amount of retained recourse against which capital would be assessed by the amount of the recourse liability reserve that is established pursuant to GAAP. Section 208, however, requires qualifying institutions selling small business obligations with recourse to establish and maintain a reserve equal to the amount of its reasonable estimated liability under the recourse arrangement *and* maintain capital against the amount of retained recourse. The Board notes that the reserve required under GAAP for the reasonable estimated liability on assets transferred with recourse is established to cover expected losses while regulatory capital is maintained to absorb unexpected losses beyond those that were estimated and expected. Thus, the Board believes that it is appropriate to assess risk-based capital against the full amount of recourse, as well as require the establishment of a liability reserve pursuant to GAAP.

However, the final rule does not, as proposed, amend the leverage capital guidelines for state member banks to require that the off-balance sheet amount of retained recourse on small business loans sold with recourse be included in the calculation of the leverage ratio. The Board has concluded that the leverage ratio should continue to be based primarily on the amount of average total on-balance-sheet assets as reported in the Call Report.

The Board's final rule extends the preferential capital treatment for transfers of small business obligations with recourse only to qualifying institutions. A state member bank will be considered qualifying if, pursuant to the Board's prompt corrective action regulation (12 CFR 208.30), it is well capitalized or, by order of the Board, adequately capitalized.[4] Although bank holding companies are not subject to the prompt corrective action regulation, they will be considered qualifying under the Board's final rule if they meet the criteria for well capitalized or, by order of the Board, for adequately capitalized as those criteria are set forth for banks. In order to qualify, an institution must be determined to be well capitalized or adequately capitalized without taking into account the preferential capital treatment the rule provides for any previous transfers of small business obligations with recourse.

Under the final rule, the total outstanding amount of recourse retained by a qualifying banking organization on transfers of small business obligations receiving the preferential capital treatment cannot exceed 15 percent of the institution's total risk-based capital.[5] By order, the Board may approve a higher limit. If a banking organization is no longer qualifying (i.e., becomes less than well capitalized) or exceeds the established limit, it will not be able to apply the preferential capital treatment to any transfers of small business obligations with recourse that occur while the institution is not qualified or above the capital limit. However, those transfers of small business obligations with recourse that were completed while the banking organization was qualified and before it exceeded the established limit of 15 percent of total risk-based capital will continue to receive the preferential capital treatment even when the institution is no longer qualified or the amount of retained recourse on such transfers subsequently exceeds the capital limitation.

Section 208(f) provides that the capital of an insured depository institution shall be computed without regard to section 208 when determining

[4] Under 12 CFR 208.30, a state member bank is deemed to be well capitalized if it: 1) has a total risk-based capital ratio of 10.0 percent or greater; 2) has a Tier 1 risk-based capital ratio of 6.0 percent or greater; 3) has a leverage ratio of 5.0 percent or greater; and 4) is not subject to any written agreement, order, capital directive, or prompt corrective action directive issued by the Board pursuant to section 8 of the FDI Act, the International Lending Supervision Act of 1983, or section 38 of the FDI Act or any regulation thereunder, to meet and maintain a specific capital level for any capital measure.

A state member bank is deemed to be adequately capitalized if it: 1) has a total risk-based capital ratio of 8.0 or greater; 2) has a Tier 1 risk-based capital ratio of 4.0 percent or greater; 3) has a leverage ratio of 4.0 percent or greater or a leverage ratio of 3.0 percent or greater if the bank is rated composite 1 under the CAMEL rating system in its most recent examination and is not experiencing or anticipating significant growth; and 4) does not meet the definition of a well capitalized bank.

[5] Thus, a transfer of small business obligations with recourse that results in a qualifying banking organization retaining recourse in an amount greater than 15 percent of its total risk-based capital would not be eligible for the preferential capital treatment, even though the organization's amount of retained recourse before the transfer was less than 15 percent of capital.

whether an institution is adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized for purposes of prompt corrective action under the Board's prompt corrective action regulation (12 CFR 208.33(b)).

The caption to section 208(f) of the Riegle Act, "Prompt Corrective Action Not Affected," and the legislative history indicate section 208 was not intended to affect the operation of the prompt corrective action system. See S. Rep. No. 103–169, 103d Cong., 1st Sess. 38, 69 (1993). However, the statute does not include "well capitalized" in the list of capital categories not affected. The prompt corrective action system deals primarily with imposing corrective sanctions on institutions that are less than adequately capitalized. Therefore, allowing a bank that is adequately capitalized without regard to section 208 to use the section's capital provisions for purposes of determining whether the bank is well capitalized generally would not affect the application of the prompt corrective action sanctions to the bank.[6] Other statutes and regulations treat a bank more favorably if it is well capitalized as defined under the prompt corrective action statute, but these provisions are not part of the prompt corrective action system of sanctions. Permitting an institution to be treated as well capitalized for purposes of these other provisions also will not affect the imposition of prompt corrective action sanctions.

There is one provision of the prompt corrective action system that could be affected by treating an institution as well capitalized rather than adequately capitalized. In this regard, if the institution's condition is unsafe and unsound or it is engaging in an unsafe or unsound practice, section 208.33(c) of the Board's prompt corrective action regulation (12 CFR 208.33(c)) authorizes the Board to reclassify a well capitalized institution as adequately capitalized and require an adequately capitalized institution to comply with certain prompt corrective action provisions as if that institution were undercapitalized. Because the text and legislative history of section 208 of the Riegle Act clearly indicate that Congress did not intend to affect prompt corrective action sanctions, the Board believes that the provisions of section 208 do not affect the capital calculation for purposes of reclassifying a bank from one capital category to a lower capital category, regardless of the bank's capital level.

Thus, an institution may use the capital treatment described in section 208 of the Riegle Act when determining whether it is well capitalized for purposes of prompt corrective action as well as for other regulations that reference the well capitalized capital category.[7] An institution may not use the capital treatment described in section 208 when determining whether it is adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized for purposes of prompt corrective action or other regulations that directly or indirectly reference the prompt corrective action capital categories.[8] Furthermore, the capital ratios of an institution are to be determined without regard to the preferential capital treatment described in section 208 of the Riegle Act for purposes of being reclassified from one capital category to a lower category as described in the Board's prompt corrective action regulation (12 CFR 208.33(c)).

Section 208(g) of the Riegle Act required that final regulations implementing the provisions of section 208 be promulgated not later than 180 days after the date of the statute's enactment, i.e., by March 22, 1995. In order to meet the spirit of the statute, the preferential capital treatment may be applied by qualifying banking organizations for those transfers of small business obligations with recourse that occurred on or after March 22, 1995, provided certain conditions are met.

The Board also notes that Section 208(a) of the Riegle Act provides that the accounting principles applicable to the transfer of small business obligations with recourse contained in reports or statements required to be filed with the federal banking agencies by a qualified insured depository institution shall be consistent with GAAP.[9] The Board, in consultation with the other agencies and under the auspices of the Federal Financial Institutions Examinations Council, intends to ensure that appropriate revisions are made to the Consolidated Reports of Condition and Income (Call Reports) and the Call Report instructions to implement the accounting provisions of section 208.

Regulatory Flexibility Act

This rule reduces the capital requirements on transfers with recourse of small business loans and leases of personal property. Therefore, pursuant to section 605(b) of the Regulatory Flexibility Act, the Board hereby certifies that this rule will not have a significant economic impact on a substantial number of small business entities (in this case, small banking organizations). Accordingly, a regulatory flexibility analysis is not required. The risk-based capital guidelines generally do not apply to bank holding companies with consolidated assets of less than $150 million; thus, the rule will not affect such companies.

Paperwork Reduction Act and Regulatory Burden

The Board has determined that this rule will not increase the regulatory paperwork burden of banking organizations pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160) requires that new regulations take effect on the first day of the calendar quarter following publication of the rule, unless the agency determines, for good cause, that the regulation should become effective on a day other than the first day of the next quarter. October 1, 1995 would be

[6] It is very unlikely but theoretically possible for a banking organization that is undercapitalized without using the preferential capital treatment in section 208 to become well capitalized if the provisions of section 208 are applied. Since, in the Board's view, section 208 was not intended to affect prompt corrective action sanctions, allowing an undercapitalized institution (without taking into account section 208) to be treated as well capitalized (taking into consideration section 208) would be an inappropriate application of the preferential capital treatment permitted under section 208. Thus, undercapitalized banking organizations will not be able to use the capital provisions of section 208 for purposes of improving their prompt corrective action capital category.

[7] A institution that is subject to a written agreement or capital directive as discussed in the Board's prompt corrective action regulation would not be considered well capitalized. Also, undercapitalized banking organizations will not be able to use the capital provisions of section 208 for purposes of improving their prompt corrective action capital category. (See footnote 6.)

[8] Under the provisions of section 208, the capital calculation used to determine whether an institution is well capitalized differs from the calculation used to determine whether an institution is adequately capitalized. As a result, it is possible that an institution could be well capitalized using one calculation (i.e., one that considers the preferential capital treatment) and adequately capitalized using the other (i.e., one that is calculated without regard to the preferential capital treatment). In this situation, the institution would be considered well capitalized.

[9] Transfers of small business obligations with recourse that are consummated at a time when the transferring banking organization does not qualify for the preferential capital treatment or that result in the organization exceeding the 15 percent capital limitation will continue to be reported in accordance with the instructions of the Consolidated Reports of Condition and Income (Call Reports) for sales of assets with recourse. The Call Report instructions generally require banks transferring assets with recourse to continue to report the assets on their balance sheets.

the first day of the calendar quarter following publication of the rule that would also satisfy the requirements of the Administrative Procedures Act (5 U.S.C. 553(d)). The Board has decided that the final rule should be effective immediately since the rule relieves a regulatory burden on banking organizations that transfer small business obligations with recourse by significantly reducing the capital requirements on such obligations. This immediate effective date will permit banks to treat transfers of small business obligations as sales and to reduce the capital requirement for any such sales. Also, there is a statutory requirement for the banking agencies to promulgate final regulations implementing the provisions of section 208 by March 22, 1995. For these same reasons, in accordance with 5 U.S.C. 553(d) (1) and (3), the Board finds there is good cause not to follow the 30-day notice requirements of 5 U.S.C. 553(d) and to make the final rule effective immediately.

List of Subjects

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the Board amends 12 CFR parts 208 and 225 as set forth below:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 36, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p–l, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1 and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b.

2. In part 208, appendix A, section *III*.B. is amended by adding a new paragraph 5. to read as follows:

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

* * * * *

III. * * *

B. * * *

5. *Small Business Loans and Leases on Personal Property Transferred with Recourse.* a. Notwithstanding other provisions of this appendix A, a qualifying bank that has transferred small business loans and leases on personal property (small business obligations) with recourse shall include in weighted-risk assets only the amount of retained recourse, provided two conditions are met. First, the transaction must be treated as a sale under GAAP and, second, the bank must establish pursuant to GAAP a non-capital reserve sufficient to meet the bank's reasonably estimated liability under the recourse arrangement. Only loans and leases to businesses that meet the criteria for a small business concern established by the Small Business Administration under section 3(a) of the Small Business Act are eligible for this capital treatment.

b. For purposes of this appendix A, a bank is qualifying if it meets the criteria set forth in the Board's prompt corrective action regulation (12 CFR 208.30) for well capitalized or, by order of the Board, adequately capitalized. For purposes of determining whether a bank meets the criteria, its capital ratios must be calculated without regard to the preferential capital treatment for transfers of small business obligations with recourse specified in section III.B.5.a. of this appendix A. The total outstanding amount of recourse retained by a qualifying bank on transfers of small business obligations receiving the preferential capital treatment cannot exceed 15 percent of the bank's total risk-based capital. By order, the Board may approve a higher limit.

c. If a bank ceases to be qualifying or exceeds the 15 percent capital limitation, the preferential capital treatment will continue to apply to any transfers of small business obligations with recourse that were consummated during the time that the bank was qualifying and did not exceed the capital limit.

d. The risk-based capital ratios of the bank shall be calculated without regard to the preferential capital treatment for transfers of small business obligations with recourse specified in section III.B.5.a. of this appendix A for purposes of:

(i) Determining whether a bank is adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized under prompt corrective action (12 CFR 208.33(b)); and

(ii) Reclassifying a well capitalized bank to adequately capitalized and requiring an adequately capitalized bank to comply with certain mandatory or discretionary supervisory actions as if the bank were in the next lower prompt corrective action capital category (12 CFR 208.33(c)).

* * * * *

3. In part 208, appendix B, section II. is amended by redesignating paragraph c. as paragraph g. and adding new paragraphs c., d., e., and f to read as follows:

Appendix B to Part 208—Capital Adequacy Guidelines for State Member Banks: Tier 1 Leverage Measure

* * * * *

II. * * *

c. Notwithstanding other provisions of this appendix B, a qualifying bank that has transferred small business loans and leases on personal property (small business obligations) with recourse shall, for purposes of calculating its tier 1 leverage ratio, exclude from its average total consolidated assets the outstanding principal amount of the small business loans and leases transferred with recourse, provided two conditions are met. First, the transaction must be treated as a sale under generally accepted accounting principles (GAAP) and, second, the bank must establish pursuant to GAAP a non-capital reserve sufficient to meet the bank's reasonably estimated liability under the recourse arrangement. Only loans and leases to businesses that meet the criteria for a small business concern established by the Small Business Administration under section 3(a) of the Small Business Act are eligible for this capital treatment.

d. For purposes of this appendix B, a bank is qualifying if it meets the criteria set forth in the Board's prompt corrective action regulation (12 CFR 208.30) for well capitalized or, by order of the Board, adequately capitalized. For purposes of determining whether a bank meets these criteria, its capital ratios must be calculated without regard to the preferential capital treatment for transfers of small business obligations with recourse specified in section II.c. of this appendix B. The total outstanding amount of recourse retained by a qualifying bank on transfers of small business obligations receiving the preferential capital treatment cannot exceed 15 percent of the bank's total risk-based capital. By order, the Board may approve a higher limit.

e. If a bank ceases to be qualifying or exceeds the 15 percent capital limitation, the preferential capital treatment will continue to apply to any transfers of small business obligations with recourse that were consummated during the time that the bank was qualifying and did not exceed the capital limit.

f. The leverage capital ratio of the bank shall be calculated without regard to the preferential capital treatment for transfers of small business obligations with recourse specified in section II of this appendix B for purposes of:

(i) Determining whether a bank is adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized under prompt corrective action (12 CFR 208.33(b)); and

(ii) Reclassifying a well capitalized bank to adequately capitalized and requiring an adequately capitalized bank to comply with certain mandatory or discretionary supervisory actions as if the bank were in the next lower prompt corrective action capital category (12 CFR 208.33(c)).

* * * * *

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828o, 1831i, 1831p–l, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In part 225, appendix A, section III.B. is amended by adding a new paragraph 5. to read as follows:

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

* * * * *

III. * * *

B. * * *

5. *Small Business Loans and Leases on Personal Property Transferred with Recourse.* a. Notwithstanding other provisions of this appendix A, a qualifying banking organization that has transferred small business loans and leases on personal property (small business obligations) with recourse shall include in weighted-risk assets only the amount of retained recourse, provided two conditions are met. First, the transaction must be treated as a sale under GAAP and, second, the banking organization must establish pursuant to GAAP a non-capital reserve sufficient to meet the organization's reasonably estimated liability under the recourse arrangement. Only loans and leases to businesses that meet the criteria for a small business concern established by the Small Business Administration under section 3(a) of the Small Business Act are eligible for this capital treatment.

b. For purposes of this appendix A, a banking organization is qualifying if it meets the criteria for well capitalized or, by order of the Board, adequately capitalized, as those criteria are set forth in the Board's prompt corrective action regulation for state member banks (12 CFR 208.30). For purposes of determining whether an organization meets these criteria, its capital ratios must be calculated without regard to the capital treatment for transfers of small business obligations with recourse specified in section III.B.5.a. of this appendix A. The total outstanding amount of recourse retained by a qualifying banking organization on transfers of small business obligations receiving the preferential capital treatment cannot exceed 15 percent of the organization's total risk-based capital. By order, the Board may approve a higher limit.

c. If a bank holding company ceases to be qualifying or exceeds the 15 percent capital limitation, the preferential capital treatment will continue to apply to any transfers of small business obligations with recourse that were consummated during the time that the organization was qualifying and did not exceed the capital limit.

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 25, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–21607 Filed 8–30–95; 8:45 am]

BILLING CODE 6210–01–P