FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. 8806
April 22, 1980]

# CREDIT RESTRAINT PROGRAM

## Additional Questions and Answers—Seventh Series

*To All Member Banks, and Others Concerned,*
*in the Second Federal Reserve District:*

Printed on the following pages is the seventh series of questions and answers, representing the views of the legal staffs of the Federal Reserve Bank of New York and of the Board of Governors of the Federal Reserve System, regarding the Credit Restraint Program. The questions and answers included in this circular deal with the special credit and consumer credit restraint programs, and with marginal reserves and special deposits on managed liabilities.

In our Circular No. 8788, dated April 1, 1980 (Questions and Answers—Third Series), question A-43 addressed the calculation by creditors of the average amount of credit outstanding for the purpose of filing monthly reports. Subsequently, an additional question was raised: if the only data a creditor has available are as of the close of business on the day before the reporting period (*e.g.,* March 14, 1980) and as of the close of business on the final day of the reporting period (*e.g.,* April 30, 1980), may the creditor average the two amounts or must the creditor only use the amount as of the close of business on the final day of the reporting period? Since the amount as of the close of business on the day before the reporting period is obviously the same amount as that on the start of business on the first day of the reporting period, the creditor may either average the two amounts or only use the amount as of the close of business on the final day of the reporting period. Whichever method is used, however, it should not be changed for the duration of the program unless data become available on a more frequent basis during the period, in which case the more frequent data should be used.

A question has also been asked concerning whether a covered creditor that intends to make a change in terms with respect to its open-end or other open credit accounts is required to send the 30-day notice to consumers whose accounts are inactive. The notice need not be sent to inactive consumer account holders. However, those consumers to whom the notice was not sent will not be affected by the change in terms until the requirements of Section 229.6 of the Board's Regulation on Credit Restraint are complied with.

Any questions regarding the Credit Restraint Program may be directed to the persons listed in our Circular No. 8794, dated April 9, 1980.

ANTHONY M. SOLOMON,
*President.*

## Subpart A

A-60. Q: A closed-end loan is extended on an unsecured basis. Some time after the loan is closed, the creditor takes a security interest in the property purchased with the proceeds. Does the addition of the security interest affect the classification of the loan as covered credit?

A: No. The loan was originally covered and remains so, despite the later addition of a security interest.

A-61. Q: Is a loan for the payment of personal income taxes to be included in covered credit?

A: Yes. Unless one of the exceptions, such as a loan secured by a savings deposit, applies, the loan is covered credit.

A-62. Q: A creditor extends loans which are partially guaranteed by the Federal or State Government. Should the full amount of the loan be considered exempt from covered credit, or only that portion subject to the guarantee?

A: So long as any portion of the loan is guaranteed, the entire loan comes within the exemption and should be excluded from covered credit.

A-63. Q: Must a holding company or other parent corporation elect a single base reporting method for all of its subsidiaries or may each subsidiary choose between the March 14 base and the adjusted base, in compiling aggregate figures for the credit reports?

A: The holding company or parent corporation must elect a single method which will be binding on all of its subsidiaries.

A-64. Q: Is the financing of insurance premiums by an insurance company considered covered credit?

A: Yes. Unless the credit is secured by the insurance policy to which the premiums apply, it is covered credit.

A-65. Q: Where a holding company includes savings and loan subsidiaries subject to the jurisdiction of the Federal Home Loan Bank Board, which agency should receive the holding company's reports and any special deposits?

A: If the report is filed by the holding company on behalf of all of the subsidiaries, the reports and any deposit should be handled by the Federal Reserve Bank for that holding company. If the holding company designates one of its subsidiaries to file the reports, the agency with jurisdiction over that subsidiary should receive the reports and any special deposit. For example, if the holding company designates a savings and loan association subject to the Federal Home Loan Bank Board, that agency should receive the reports. If, on the other hand, the holding company selects a subsidiary subject to the Federal Reserve Board, the appropriate Federal Reserve Bank should receive the reports.

A-66. Q: Under Section 229.6, may a covered creditor impose a charge (e.g., a transaction charge or an annual fee), adopt a different method for computing the balance on which a finance charge is imposed, or eliminate a "free-ride" period if any of those actions is otherwise prohibited by State or Federal law?

A: No. The change in terms amendment is not intended to allow a creditor to impose a charge in excess of the maximum permitted by law, or to change the method of computing the balance on which a finance charge is imposed (including elimination of a "free-ride" period), if a particular method or a "free-ride" period is either required or prohibited by law.

A-67. Q: When does a consumer "incur additional debt" so as to trigger acceptance of the new terms under Section 229.6(a)?

A: For purchases, it is the date of the purchase transaction. For check and share draft accounts with a line of credit, it is the date that the credit extension is debited to the consumer's account. For all cash advances on a credit line, it is the date that the advance is debited to the consumer's account.

A-68. Q: If a creditor changes the terms of an account under Section 229.6, may it continue to use its existing stock of initial and periodic disclosure statements required by Section 226.7 (a) and (b) of Regulation Z, despite the fact that those statements reflect the old account terms?

A: Yes. A creditor may use its present stock of disclosure forms so long as they are amended as necessary by correction notices or other information sent along with the inaccurate forms.

A-69. Q: If a customer incurs additional debt several months after the effective date of change, may a creditor apply the new account terms to a balance that was outstanding on the effective date, even though the customer has paid off a portion or all of that balance?

A: No. A creditor may apply the new terms only to the balance outstanding on the date that the customer makes the charge, or to the balance outstanding during the billing cycle within which the customer makes the charge.

A-70. Q: If a consumer has authorized his or her account to be automatically and periodically debited to pay premiums for credit life, disability, or similar insurance, does such automatic debiting after the effective date of change trigger acceptance of the new terms?

A: If the insurance coverage was voluntarily purchased, and can be voluntarily terminated, and if the creditor in its notice to customers indicates that such preauthorized charge will be considered an agreement by the customer to the change, then such automatic debiting will trigger acceptance. If the insurance coverage was required in connection with an extension of credit, then automatic debiting of such premiums to an open-end account cannot be considered "incurring additional debt" under Section 229.6.

A-71. Q: Prior to March 14, 1980, a covered creditor enters into a binding contract for a sale without recourse of covered credit to occur after March 14. The selling creditor will no longer extend the type of covered credit that is being sold. May the base of the purchasing creditor be adjusted?

A: Assuming that the contract is in all other respects enforceable and the parties agree to the transfer of the base, the selling creditor may reduce its base by the amount of covered credit sold and the purchasing creditor may increase its base by the same amount. In that event, the adjustment of the bases should be promptly reported to the Federal Reserve Bank or other appropriate agency at the time the sale is completed.

A-72. Q: A covered creditor has the operational capacity—and is permitted by State law—to impose two different sets of terms on old and new credit balances. May the creditor utilize Section 229.6, but permit its customers to pay off outstanding balances on the old terms, even where those customers incur additional debt after the effective date of the change in terms?

A: A creditor that wishes to do so may continue to impose the old account terms on existing balances, imposing the new terms only on additions to those balances. The notice of the change in terms should be modified to reflect this fact.

A-73. Q: Does the Federal Reserve contemplate preempting State usury laws in its administration of the Credit Restraint Program?

A: No. The Federal Reserve Board has not preempted State usury ceilings.

A-74. Q: Do the provisions covering changes in the terms of consumer credit accounts announced April 16 affect Federal finance charge limitations for covered creditors?

A: They do not affect maximum rates permitted to creditors provided for under the Depository Institutions Deregulation and Monetary Control Act of 1980. Federal finance charge limitations for other covered creditors, such as oil company credit programs, are superseded.

## Special Credit Restraint Program

S-20. Q: If a corporation reporting on Form FR 2062e does not have timely, or any, records for some components of the corporation's indebtedness to non-U.S. entities—in particular, debt initially placed in the U.S. through third parties, and open-book credit—and is unable even to make a "good faith" estimate of such components, how should these items be reported?

A: It is not necessary for reporting corporations to determine the amount of debt issued directly to U.S. lenders or raised through U.S. dealers or other U.S. third parties that is now held by non-U.S. entities. No part of the outstanding amounts of such debt should be reported in Item A2 of Form FR 2062e. However, a shift toward placing debt abroad through U.S. third parties for other than normal business reasons would, of course, not be consistent with the spirit of the Special Credit Restraint Program.

Reporting corporations are expected to include open-book credit (trade notes and accounts payable) in reporting third-party indebtedness to non-U.S. entities, if this is feasible. If data on net payables to non-U.S. subsidiaries and affiliates and/or gross payables to other non-U.S. entities are available, but not on a timely basis, the corporation should consult with its Reserve Bank as to whether to include this component with a lag or to make some other adjustment. If there is no practical way for the corporation to develop data on open-book credit owed to non-U.S. entities, this component may be omitted from Item A2 but the Reserve Bank should be informed of the omission. In any event, open-book credit—and all other components as well—should be reported on a consistent basis from month to month.

S-21. Q: May data be reported as of some day other than the one called for on the reporting forms —that is, other than the last Wednesday of the month for commercial banks, branches and agencies of foreign banks and bank holding companies, and the last business day of the month for all other reporting entities?

A: It is not necessary to develop data as of the stipulated day if records for all or part of the reporting entity are generally available only as of some other day during the month. However, data should be reported on a consistent basis from month to month, and the date (or dates, in the case of mixed reporting) to which they refer should be noted on the reporting form.

S-22. Q: At least part of the data for a bank's foreign offices that are required to complete the bank's

(or holding company's) Special Credit Restraint Program report normally do not become available to the U.S. parent in time to permit filing the report with the Reserve Bank by the stipulated deadline. Is an extended deadline available? May some or all data be reported with a one-month lag? For example, for the April report, may the "current" month in fact be March either for some items in their entirety, or for the foreign-office component of all items?

A: Reporting problems of this kind should be discussed with the Reserve Bank, since they will be considered on a case-by-case basis. In general, extension of the reporting deadline by a few days is preferable to lagged reporting, especially for data relating to loans. In cases where lack of timely data for foreign offices relates only to the liquidity and capital measures, reporting with a one-month lag of items affected by the foreign data will be considered. Any adjustments in reporting must be approved by the Reserve Bank in advance.

S-23. Q: Are industrial revenue bonds to be included in total loans and leases subject to the 6 to 9 percent growth limitation?

A: No. Industrial revenue bonds are defined as investments, not loans. However, Reserve Banks will be alert to the possibility of a bank's arranging an industrial revenue bond financing as a substitute for a commercial or industrial loan the bank would have made in the absence of the Special Credit Restraint Program. Any bank that appears to be acquiring an unusually large amount of industrial revenue bonds will be asked for an explanation.

S-24. Q: Are factoring receivables included in total loans subject to the 6 to 9 percent limitation?

A: Since the instructions to the Call Report appear to define such accounts as loans, they should be defined as loans for purposes of the Special Credit Restraint Program.

## Marginal Reserves and Special Deposits on Managed Liabilities

## Subpart C of Part 229 and Regulation D

C-2, D-1. Q: When should interest accrued but unpaid on time deposits be considered subject to the marginal reserve/special deposit program?

A: Interest amounts accruing on any managed liabilities are subject to the marginal reserve/special deposit program only when those amounts are credited to the accounts. Thus, any interest amount not included in customer account balances is not a managed liability.

C-3, D-2. Q: How should the managed liabilities base be calculated in the case of a merger of another bank into a member bank?

A: The base for the merged bank should be calculated by combining the actual amount of managed liabilities outstanding for each bank during the base periods. If such data are not available, the surviving bank may use the base of either bank entering the merger, or $100 million, whichever is larger. With respect to any reduction of foreign loans in future periods, however, if either bank had such loans, the surviving bank must submit reports combining the foreign loans outstanding during September 13-26, 1979, for both banks entering the merger.

C-4, D-3. Q: Are Eurodollar placements or term Federal funds sold to foreign offices of other banks to be included in foreign loans?

A: Yes. Reductions in such assets permit banks to extend credit to domestic borrowers without increasing managed liabilities subject to the marginal reserve/special deposit requirement.