

FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. 9204]
[December 2, 1981]

RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS

Amendment to Regulation D Modifying the Two-Year Phase-in of Reserve
Requirements for New Depository Institutions

*To All Depository Institutions in the Second
Federal Reserve District, and Others Concerned:*

Following is the text of a statement by the Board of Governors of the Federal Reserve System:

The Federal Reserve Board has amended, temporarily, its Regulation D (reserve requirements) to provide that the two-year period for phasing in reserve requirements of new depository institutions will not apply to institutions that commenced business on or after November 18, 1981 if they have reservable liabilities of \$50 million or more.

At the same time, the Board said that it intends to adopt a revised phase-in rule of this nature as a final rule, and that it was considering making its final rule applicable to all depository institutions, including those engaged in business before November 18, 1981. The Board asked for comment by December 21.

The phase-in rule of Regulation D for new institutions was meant to assist them during their start-up period. As revised, the rule is expected to have the same effect and not to affect small institutions. The Board said it was taking this action to prevent reserve avoidance by bank holding companies that open out-of-state banking subsidiaries.

Enclosed is a copy of the text of the amendment to Regulation D, which includes a full explanation of the Board's action and request for comment.

Comments on the amendment, which is being adopted on a temporary basis by the Board in order to allow for a comment period, should be submitted by December 21 and may be sent to our Legal Department.

ANTHONY M. SOLOMON,
President.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS

AMENDMENT TO REGULATION D

(effective November 19, 1981)

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Docket No. R-0374]

Regulation D; Reserve Requirements of Depository Institutions; De Novo Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Temporary rule and request for public comment.

SUMMARY: The Board of Governors has amended Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204) to modify the two-year phase-in of reserve requirements that is accorded to *de novo* depository institutions. Under the amendment, the two-year phase-in of reserve requirements will apply only as long as the institution has total reservable liabilities of less than \$50 million. This amendment assures that a two-year phase-in of reserve requirements will not be available to new institutions commencing business on or after November 18, 1981, that experience rapid growth in deposits that would otherwise not be subject to full reserve requirements and will be available only as a benefit to smaller institutions during their start-up period. This rule is being adopted on a temporary basis in order to provide the public with an opportunity to comment on this issue.

EFFECTIVE DATE: November 19, 1981. Comments must be received by December 21, 1981.

ADDRESS: Interested parties are invited to submit written data, views, or arguments concerning the rule to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551, or should be delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

FOR FURTHER INFORMATION CONTACT:

Gilbert T. Schwartz, Associate General Counsel (202/452-3625) or Paul S. Pilecki, Senior Attorney (202/452-3281), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The Monetary Control Act of 1980 (Title I of Pub. L. 96-221; 94 Stat. 132) provides an eight-year phase-in of reserve requirements for nonmember depository institutions existing on July 1, 1979. Neither the Monetary Control Act nor the Federal Reserve Act explicitly provide for a phase-in of reserve requirements for *de novo* depository institutions. However, when Regulation D was revised in 1980 to implement the Monetary Control Act, in order to assure an orderly transition for *de novo* institutions, the Board provided a 24-month adjustment period to institutions that commenced business after July 1, 1979. Such a phase-in had been established by the Board in 1976 for *de novo* member banks.

Effective February 17, 1981, Delaware law permits out-of-state bank holding companies to acquire stock in *de novo* state-chartered banks and national banks having their principal banking offices in Delaware (Del. Code Ann., Title 5, section 801 *et seq.*). The Delaware statute establishes minimum requirements for capital and numbers of employees and certain other conditions of operation of such banks. The Board has considered recently the application of a bank holding company to acquire such an institution and is aware of steps being taken by other money center and large regional banks to establish banking affiliates in Delaware.

The principal reasons for establishing banks in Delaware by out-of-state bank holding companies are to avoid higher state and local tax rates in the holding company's principal state of operation or to avoid more constraining usury limitations in such states. The prospects of attracting new business in the Delaware market appear to be minimal. Indeed, the Delaware statute limits banks owned by the out-of-state holding

company to one office and the bank is required to be operated in a manner and at a location that is not likely to attract customers from the general public in Delaware to the substantial detriment of existing banking institutions located there. Consequently, it is likely that most of the business at banks in Delaware established by out-of-state bank holding companies would otherwise have been booked at their non-Delaware affiliates. Under these circumstances, liabilities against which full reserve requirements have been maintained or would be maintained would be subject to lower reserve requirements thereby providing a further benefit to such out-of-state bank holding companies. In addition, in states that permit multibank holding companies, the reserve requirement savings would apply in the case of the formation of a *de novo* institution and shifting of assets and liabilities from existing affiliated banks.

The two-year reserve requirement phase-in provision was not intended to enable a depository institution that maintains full reserve requirements to reduce its current reserve burden. In this regard, the *de novo* phase-in was established so that new institutions would not be disadvantaged during their start-up period. The Board believes that where an institution achieves rapid growth, the *de novo* phase-in is no longer necessary. In light of these concerns, including the potential impact upon Treasury revenues and monetary control, the Board has amended Regulation D on a temporary basis to eliminate the *de novo* phase-in of reserve requirements for institutions that grow rapidly. Under the amendment, the *de novo* phase-in is limited to only those institutions that have less than \$50 million of total reservable liabilities.¹ That is, a *de novo*

¹ U.S. agencies and branches of foreign banks receive a *de novo* phase-in only if the new institution represents the first presence of the foreign bank in the U.S. Thereafter, new U.S. offices of the foreign bank are subject to the same reserve requirements as their affiliated U.S. offices. Thus, the potential for reserve savings from shifting liabilities to *de novo* offices does not exist for these institutions.

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institution that commences business after November 18, 1981, would receive the two-year phase-in of reserve requirements only so long as its total reservable liabilities remained below \$50 million. This approach eliminates the possibility that institutions would reduce substantially their required reserves by shifting liabilities to *de novo* depository institution affiliates, thus limiting the potential for Treasury revenue losses and monetary control problems. At present, the amendment will apply only to depository institutions that commence business on or after November 18, 1981. However, the Board in adopting a final rule, intends to apply this provision to all depository institutions, including those that commenced business prior to November 18, 1981. Accordingly, the Board requests comment on whether a grandfather provision should be established if the rule is adopted on a permanent basis. In addition, the Board requests comment on whether the rule should apply only to depository institutions that are affiliated with other depository institutions.

The Board believes that this rule will not affect small entities, since it applies to depository institutions that have total deposits of \$50 million or more. An initial regulatory flexibility analysis in compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 603) is available through the Board's Freedom of Information Office (202/452-2407).

This action was taken by the Board in order to assure that the phase-in of reserve requirements for *de novo* depository institutions is not used as a reserve avoidance device. If the phase-in for *de novo* institutions were left in its

present form, rapidly growing depository institutions could avoid reserve requirements, resulting in complications to some degree for monetary control. In view of this consideration, the Board finds that application of the notice and public participation provisions of 5 U.S.C. 553 to this action would be contrary to the public interest, and that good cause exists for making this action effective immediately.

To aid in consideration of this matter by the Board, interested persons are invited to submit relevant data, views, comment or argument. All material should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received by December 21, 1981. All material submitted should include the Docket No. R-0374. Such material will be made available for inspection and copying upon request except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS

Pursuant to its authority under sections 11(c), 19, 25 and 25(a) of the Federal Reserve Act (12 U.S.C. 248(c), 461, 601 *et seq.*, 611 *et seq.*) and under section 7 of the International Banking Act of 1978 (12 U.S.C. 3105), the Board amends Regulation D (12 CFR Part 204) effective November 19, 1981, by revising paragraph (e) of § 204.4, to read as follows:

§ 204.4 Transitional adjustments.

* * * * *

(e) *De novo institutions.* (1) The required reserves of any depository institution that was not engaged in business on September 1, 1980, shall be

computed under § 204.3 in accordance with the following schedule:

Maintenance periods occurring during successive quarters after entering into business	Percentage of reserve requirement to be maintained
1	40
2	45
3	50
4	55
5	65
6	75
7	85
8 and succeeding	100

This paragraph shall also apply to a United States branch or agency of a foreign bank if such branch or agency is the foreign bank's first office in the United States. Additional branches or agencies of such a foreign bank shall be entitled only to the remaining phase-in available to the initial office.

(2) Notwithstanding paragraph (e)(1) of this section, the required reserves of any depository institution that:

- (i) Was not engaged in business on November 18, 1981; and
- (ii) Has \$50 million or more in daily average total transaction accounts, nonpersonal time deposits and Eurocurrency liabilities for any computation period after commencing business shall maintain 100 percent of the required reserves computed under § 204.3 starting with the maintenance period that begins eight days after the computation period during which such institution has daily average total transaction accounts, nonpersonal time deposits and Eurocurrency liabilities of \$50 million or more.

By order of the Board of Governors,
November 19, 1981.
William W. Wiles,
Secretary of the Board.