

FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. 9574]
[October 27, 1983]

PROPOSED AMENDMENTS TO REGULATION O

To All Member Banks, and Bank Holding Companies,
in the Second Federal Reserve District, and Others Concerned:

The Board of Governors of the Federal Reserve System has proposed changes in its Regulation O, "Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks," to conform the regulation to the Garn-St Germain Depository Institutions Act of 1982. The Board requested comment by November 25, 1983.

The following is quoted from the text of the statement issued by the Board of Governors announcing the proposal:

The Act deleted certain reporting and disclosure requirements with respect to loans to executive officers, principal shareholders and their related interests, and instead gave federal bank regulators authority to issue rules concerning reporting and disclosure of such loans by a federally insured bank or by any of an insured bank's correspondent banks.

In June the Federal Financial Institutions Examination Council, on which the three federal bank regulators are represented, made proposals designed to implement the portions of the Garn-St Germain Act dealing with insider loans, to be effective December 31, 1983. The Council recommended that the federal bank regulators amend their regulations accordingly.

The Board's proposed revisions of Regulation O would implement the Garn-St Germain Act respecting insider lending substantially as recommended by the Examination Council. Aside from deletion of a reporting form and certain recordkeeping requirements, the regulation, as revised, would require member banks to disclose, upon request, the name of each executive officer, and principal shareholder, who — together with their related interests — had loans from the bank or its correspondent banks equal to a minimum of 5 percent of the member bank's capital and surplus, or \$500,000, whichever is less.

Printed on the reverse side is a summary of the Board's proposal. Enclosed — for member banks and bank holding companies in the Second Federal Reserve District — is the complete text of that proposal. It will be published in the *Federal Register* and will be furnished to others upon request directed to the Circulars Division of this Bank (Tel. No. 212-791-5216).

Comments should be submitted by November 25, and may be sent to our Regulations Division.

ANTHONY M. SOLOMON,
President.

(OVER)

FEDERAL RESERVE SYSTEM

[12 C.F.R. Part 215]

Regulation O

[Docket Number R-0486]

LOANS TO EXECUTIVE OFFICERS, DIRECTORS,
AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed Rule.

SUMMARY: The Board of Governors of the Federal Reserve System proposes to amend Regulation O to implement amendments to the Federal Deposit Insurance Act and the Bank Holding Company Act Amendments of 1970 that were included in Title IV of the Garn-St Germain Depository Institutions Act of 1982.

The Board proposes to replace the reporting and disclosure requirements previously mandated by statute with the more limited reporting and disclosure provisions recommended by the Exam Council. Under the proposal, a member bank is required to disclose, upon request, the names of each executive officer and principal shareholder who has loans from either the bank itself or from its correspondent banks in an amount that equals or exceeds 5 percent of the reporting bank's capital and unimpaired surplus, or \$500,000, whichever is less.

DATE: Comments must be received by November 25, 1983.

ADDRESS: Comments should be sent to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, N.W., Washington, D.C. 20551. Comments on that part of the proposed rule that comes within the scope of the Paperwork Reduction Act should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C., 20503, ATTN: Judy McIntosh (202) 395-6880.

FOR FURTHER INFORMATION CONTACT: Jennifer Johnson, Senior Counsel (202/452-3584), or Stephen Lovette, Supervisory Financial Analyst (202/452-3622), Board of Governors of the Federal Reserve System.

FEDERAL RESERVE SYSTEM

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SUPPLEMENTARY INFORMATION: Prior to the enactment of the Garn-St Germain Depository Institutions Act of 1982 (P. L. 97-320, 96 Stat. 1469) ("Garn Act"), insured banks were

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required under 12 U.S.C. 1817(k)(1) and the Board's Regulation O (12 C.F.R. 215.10), to file with their appropriate federal banking agency a report containing the following information with respect to the preceding calendar year:

(1) A list by name of each principal shareholder (i.e. each stockholder of record who directly or indirectly owns, controls, or had the power to vote more than 10 per centum of any class of voting securities of the bank) on December 31;

(2) a list by name of each executive officer and each principal shareholder of the bank, to whom or to whose related interests (i.e., any company controlled by the principal shareholders or executive officers, or any political or campaign committee that benefits them or is controlled by them) the bank had an extension of credit outstanding during the year; and

(3) the aggregate amount of all extensions of credit from the bank during the year to its executive officers, principal shareholders and their related interests.

The statute also required the bank or the federal banking agency to make the information available to the public upon request (12 U.S.C. 1817(k)(4)). In implementing this provision, section 215.10 of Regulation O required member banks to file the information on Form FFIEC 003 (OMB No. 7100-0033) on or before March 31 of each year.

Section 429 of the Garn Act deleted the specific items to be reported and disclosed pursuant to 12 U.S.C. 1817(k) and substituted a general provision authorizing each federal banking agency to issue rules and regulations to require the reporting and public disclosure of information by a bank or any executive officer or principal shareholder thereof concerning extensions of credit by the bank to any of its executive officers or principal shareholders or the related interests of such persons. Section 430 of the Garn Act provides that the provisions of 12 U.S.C. 1817(k) shall remain in effect until the new regulations authorized by the Act become effective.

Loans From Correspondent Banks

Also prior to the Garn Act, 12 U.S.C. 1972 (2)(G)(ii) and Regulation O (12 C.F.R. 215.22) required each insured bank to compile and forward to its appropriate federal regulatory agency the following information regarding loans from correspondent banks to the executive officers and principal shareholders of the insured bank and to the related interests of such persons:

(1) the maximum amount of indebtedness of each such person to each of the bank's correspondent banks during the calendar year.

(2) The amount of indebtedness of each such person to the bank's correspondent bank that is outstanding as of ten days before the filing of the annual report by the executive officer or principal shareholder with the reporting bank; and

(3) the terms and conditions, including the range of interest rates charged for each extension of credit to each executive officer and principal shareholder and each of their related interests.

The required information is based on a compilation of the annual reports that each executive officer or principal shareholder must make, on Form FFIEC 004 (OMB No. 7100-0034) or a similar form containing identical information, to the board of directors of the bank pursuant to 12 U.S.C. 1972(2)(G)(i).^{1/} Regulation O currently requires that the information be reported to the bank on or before January 31 of the following year (12 C.F.R. 215.22).

In addition, 12 U.S.C. 1972(2)(G)(iii) required each insured bank to include in the report made under 12 U.S.C. 1817(k) a list by name of each executive officer and principal shareholder who filed a report with the bank's board of directors pursuant to 12 U.S.C. 1972(2)(G)(i), and the aggregate amount of loans made by correspondent banks to executive officers and principal shareholders and their related interests. In implementing this provision, section 215.23 of Regulation O required member banks to file the information Form FFIEC 003 on or before March 31 of each year.

^{1/} The Garn Act did not affect the provisions of 12 U.S.C. § 1972(2)(G)(i); thus, the executive officers and principal shareholders must continue to provide this information to the board of directors of their banks.

Section 428 of the Garn Act amended 12 U.S.C. 1972 (2)(G) by deleting subparagraphs (ii) and (iii) and substituting a general provision that authorizes the appropriate federal banking agencies to issue rules and regulations to require the reporting and public disclosure of information by any bank or executive officers or principal shareholders thereof of information concerning any extension of credit by a correspondent bank to the reporting bank's executive officers or principal shareholders, or the related interests of such persons. Again, the Garn Act provides that the existing requirements remain in effect until the new regulations become effective.

Examination Council

On June 27, 1983, pursuant to 12 U.S.C. 3305(c) the Federal Financial Institutions Examination Council ("Exam Council") approved:

a. The elimination, subject to OMB clearance, of Form FFIEC 003, "Report on Ownership of the Reporting Bank and Indebtedness of Executive Officers and Principal Shareholders to the Reporting Bank and to Correspondent Banks". The elimination of this Form for state member banks has been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act and 5 C.F.R. § 1320.13.

b. The addition, subject to OMB clearance, to the quarterly Report of Condition required of all insured commercial banks of the following two items of information that, effective with the Report of Condition for December 31, 1983, will substitute for some of the information previously reported on Form FFIEC 003:

- (1) the aggregate extensions of credit as of the reporting date by the reporting bank to all of its executive officers and principal shareholders, and the related interests of such persons (as defined in Federal Register Regulation O); and,
- (2) the number of [these] individuals as of the reporting date whose extensions of credit from the reporting bank equal or exceed 5 percent of the reporting bank's equity capital or \$500,000, whichever is less.

These additions for state member banks were submitted to OMB for review under section 3507 of the Paperwork Reduction Act and 5 C.F.R. § 1320.12. On September 28, 1983, OMB approved the addition of these items to the Reports of Condition (OMB No. 7100-0036).

c. The retention of Form FFIEC 004, "Report on Indebtedness of Executive Officers and Principal Shareholders and their Related Interests to Correspondent Banks," as a suggested form for use by executive officers and principal shareholders of insured banks to report -- to the board of directors of their banks -- information about their debts and the debts of their related interests to correspondent banks of their banks.

Finally, pursuant to 12 U.S.C. 3305(b), the Exam Council recommended that the three federal bank regulatory agencies adopt, by December 31, 1983, regulations requiring each insured bank to publicly disclose, upon request, the names of its executive officers and principal shareholders who had extensions of credit outstanding to them or their related interests from their own banks or from their correspondent banks that equaled or exceeded 5 percent of the reporting bank's equity capital or \$500,000, whichever is less. The names of the related interests need not be disclosed.

The Proposed Rule

The Board's proposal requires member banks to disclose upon request the names of each executive officer and principal shareholder who, together with their related interests, has loans outstanding from either the bank itself or from its correspondents that equaled or exceeded 5 percent of the reporting bank's capital and unimpaired surplus or \$500,000, whichever is less. The Board's proposal contains the term 'capital and unimpaired surplus' instead of 'equity capital' as recommended by the Council. The use of the term 'equity capital' in the regulation would result in two different definitions of capital in Regulation O which the Board believes would confuse banks and the general public.

The disclosure of the names of the executive officers and principal shareholders who borrowed from the reporting bank reflects information as of the end of the latest quarter; the disclosure of the names of the executive officers and principal shareholders borrowing from correspondent banks would contain information regarding loans outstanding at any time during the previous calendar year.

The Board believes the proposed amendment would provide to the public more current and meaningful data than the disclosures required under the existing

provisions of 12 U.S.C. 1817(k)(4). Moreover, the data required for the disclosure is readily available from the internal records of the bank and from information submitted by the reporting bank's executive officers and principal shareholders to its board of directors on Form FFIEC 004.

The proposed rule also adds a requirement that member banks maintain records of requests from the public for the information covered by the regulation and of the disposition of such requests to assure compliance with the disclosure requirement.

REGULATORY FLEXIBILITY ACT ANALYSIS: Pursuant to section 605(b) of the Regulatory Flexibility Act (P.L. 96-354; 4 U.S.C. 601 et seq.), the Board of Governors System certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation. The proposed rule will liberalize existing regulations and will not have any particular impact on small entities subject to the regulation.

List of Subjects in 12 C.F.R. Part 215

Banks, Banking; Credit, Reporting

Requirements; Federal Reserve System.

Accordingly, pursuant to its authority under 12 U.S.C. 1817(k) and 1972(2)(G)(ii) as amended, the Board proposes to revise 12 C.F.R. Part 215, Regulation O, as follows:

1. Section 215.10 is revised to read as follows:

Section 215.10--DISCLOSURE OF CREDIT
FROM MEMBER BANKS TO EXECUTIVE OFFICERS
AND PRINCIPAL SHAREHOLDERS

(a) Definitions. For the purposes of this section the following definitions apply:

(1) "Principal shareholder of a member bank" means any person^{7/} (other than an insured bank, or a foreign bank as defined in 12 U.S.C. 3101(7)) that directly or indirectly, owns, controls, or has power to vote more than 10 percent of any class of

^{7/} The term "stockholder of record" appearing in 12 U.S.C. 1817(k)(1) and 1972(2)(G) is synonymous with the term "person."

voting securities of the member bank. The term includes a person that controls a principal shareholder (e.g., a person that controls a bank holding company). Shares of a bank (including a foreign bank), bank holding company, or other company owned or controlled by a member or individual's immediate family are presumed to be owned or controlled by the individual for the purposes of determining principal shareholder status.

(2) "Related interest" means any company controlled by a person and any political or campaign committee, the funds or services of which will benefit a person or that is controlled by a person. For the purpose of this section and Subpart B, a related interest does not include a bank or a foreign bank (as defined in 12 U.S.C. 3101(7)).

(b) Public disclosure. Upon request from the public, a member bank shall make available the names of its executive officers^{8/} and principal shareholders who have extensions of credit outstanding (either to the individuals or their related interests) from the member bank as of the end of the latest previous quarter of the year, in any amount that equaled or exceeded 5 percent of the member bank's capital and unimpaired surplus or \$500,000 whichever is less. A member bank is not required to disclose the specific amounts of individual extensions of credit.

(c) Maintaining records. Each member bank shall maintain records of all requests for the information described in paragraph (b) of this section and the disposition of such requests. These records may be disposed of after two years from the date of the request.

^{8/} For purposes of this section and Subpart B, an executive officer of a member bank does not include an executive officer of a bank holding company of which the member bank is a subsidiary or of any other subsidiary of that bank holding company unless the executive officer is also an executive officer of the member bank.

2. Section 215.23 is revised to read as follows:

SECTION 215.23--DISCLOSURE OF CREDIT
FROM CORRESPONDENT BANKS TO EXECUTIVE
OFFICERS AND PRINCIPAL SHAREHOLDERS

(a) Public disclosure. Upon request from the public, a member bank shall make available the names of its executive officers and principal shareholders who have extensions of credit outstanding (either to the individuals or their related interests) from the member bank's correspondent banks at any time during the previous calendar year in an amount that equaled or exceeded 5 percent of the member bank's capital and unimpaired surplus or \$500,000, whichever is less. A member bank is not required to disclose the specific amounts of individual extensions of credit.

(b) Maintaining records. Each member bank shall maintain records of all requests for the information described in paragraph (a) of this section and the disposition of such requests. These records may be disposed of after two years from the date of the request.

3. Paragraph (a) of Section 215.20 is revised and the first sentence of paragraph (b) is amended to read as follows:

SECTION 215.20--AUTHORITY PURPOSE AND SCOPE

(a) Authority. This Subpart is issued pursuant to Section 11(i) of the Federal Reserve Act (12 U.S.C. 248(i)) and 12 U.S.C. 1972 (2)(F)(vi).

(b) Purpose and scope. This Subpart implements the reporting requirements of Title VIII of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (FIRA) (P.L. 95-630) as amended by the Garn-St. Germain Depository Institutions Act of 1982 (P.L. 97-320), 12 U.S.C. 1972 (2)(g).

* * *

Board of Governors of the Federal Reserve System,
October 13, 1983.

(signed) William W. Wiles

William W. Wiles
Secretary of the Board