

**FEDERAL RESERVE BANK
OF NEW YORK**

[Circular No. **10681**
January 14, 1994]

EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS

**Amendments to Regulation A Regarding
Limitations on Extensions of Credit to Undercapitalized Institutions**

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

The Board of Governors of the Federal Reserve System has amended, effective January 30, 1994, its Regulation A, "Extensions of Credit by Federal Reserve Banks," in order to implement section 142 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) which sets limits on Discount Window advances to undercapitalized insured depository institutions. In that regard, the Board of Governors issued the following statement:

The Federal Reserve Board has issued amendments to Regulation A (Extensions of Credit by Federal Reserve Banks) to implement section 142 of the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA") regarding limits on Federal Reserve bank credit.

The amendments are effective January 30, 1994.

Under section 142, after December 19, 1993, the Board may be financially liable to the FDIC for certain losses incurred by the insurance funds administered by the FDIC. Section 142 amended section 10B of the Federal Reserve Act to discourage advances under that section to undercapitalized and critically undercapitalized insured depository institutions. Congress was concerned that such advances could lead to increased losses to the insurance funds.

In addition to making a number of technical and stylistic changes to update and clarify the regulation, the amendments:

- Place limitations on Federal Reserve Bank credit to undercapitalized and critically undercapitalized insured depository institutions;
- Describe the calculation of amounts that may be payable to the FDIC;
- Define undercapitalized and critically undercapitalized insured depository institutions;
- Clarify the term viable, as it applies to an undercapitalized insured depository institution; and
- Provide for assessments on the Federal Reserve Banks for amounts that the Board may be required to pay the FDIC under section 142.

The revised regulation will guide the Federal Reserve Banks in their dealings with undercapitalized and critically undercapitalized institutions and will advise these institutions and their banking supervisors of potential limitations on the availability of Federal Reserve Bank credit.

Enclosed — for depository institutions in the Second Federal Reserve District and others who maintain sets of regulations of the Board of Governors — is the text of the amendments to Regulation A, which has been reprinted from the *Federal Register* of December 28; additional, single copies may be obtained at this Bank (33 Liberty Street) from the Issues Division on the first floor, or by contacting the Circulars Division (Tel. No. 212-720-5215 or 5216). Questions regarding Regulation A may be directed to Michele S. Godfrey, Secretary and Vice President (Tel. No. 212-720-5222).

WILLIAM J. McDONOUGH,
President.

Board of Governors of the Federal Reserve System

EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS

Effective January 30, 1994

FEDERAL RESERVE SYSTEM**12 CFR Part 201****[Regulation A; Docket No. R-0808]****Extensions of Credit by Federal Reserve Banks****AGENCY:** Board of Governors of the Federal Reserve System.**ACTION:** Final rule.

SUMMARY: The Board is publishing a final rule to implement section 142 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), which amends section 10B of the Federal Reserve Act (FRA) in order to discourage advances, under that section, to undercapitalized and critically undercapitalized depository institutions. The Board is implementing this provision by revising rules relating to the provision of Federal Reserve credit presently contained in Regulation A—Extensions of Credit by Federal Reserve Banks.

EFFECTIVE DATE: January 30, 1994.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel (202/452-3625), or Manley Williams, Attorney (202/736-5565), Legal Division; or Gary Gillum, Senior Economist (202/452-3253), or Jim Clouse, Economist (202/452-3922), Division of Monetary Affairs, Board of

Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: On August 31, 1993, the Board published for comment proposed revisions to Regulation A—Extensions of Credit by Federal Reserve Banks, to implement section 142 of FDICIA (Title I of Pub. L. 102-242), 58 FR 45851, August 31, 1993. Section 142 amended section 10B of the FRA (12 U.S.C. 347b) to discourage advances under that section to undercapitalized and critically undercapitalized depository institutions by imposing liability on the Board for certain losses incurred by the funds administered by the Federal Deposit Insurance Corporation (FDIC). Specifically, the Board incurs limited liability for increased losses attributable to Federal Reserve Bank advances under section 10B of the FRA to an undercapitalized insured depository institution after that institution has borrowed for 60 days in any 120-day period. The 60 days may be extended for additional 60-day periods with a determination by the Chairman or the head of the appropriate Federal banking agency that the institution is viable. The Board also incurs limited liability for

increased losses attributable to section 10B advances to a critically undercapitalized insured depository institution after a five-day period beginning on the day the institution becomes critically undercapitalized. The Board's liability for these increased losses is limited to the lesser of the amount of the loss that the Board or a Federal Reserve Bank would have incurred on any increases in the amount of advances after the expiration of the applicable lending period if those advances had been unsecured, or the amount of interest received on the increased amount of the advances. The Board must report to Congress on any such liability it incurs.

In order to reflect the new provisions of section 10B, the proposed rule made several substantive changes to Regulation A. It also incorporated a number of technical and stylistic changes to update and clarify the regulation. The principal substantive changes were:

(1) Placing limitations on Federal Reserve Bank credit to undercapitalized and critically undercapitalized insured depository institutions;

(2) Describing the loss calculations;

(3) Defining undercapitalized and critically undercapitalized insured depository institutions;

(4) Clarifying the term viable, as it applies to an undercapitalized insured depository institution; and

(5) Providing for assessments on the Federal Reserve Banks for amounts that the Board may be required to pay the FDIC under section 142.

The Board received nine comment letters on the proposed rule. The commenters included four Federal Reserve Banks, two bank holding companies, a commercial bank, a credit union, and a trade association. One commenter opposed the rule, asserting that it was needlessly complex and difficult to interpret. The Board believes, however, that these revisions to Regulation A are necessary to implement section 142 and that the complexity results from the provisions of section 142. Four commenters supported the regulation's implementation of section 142. The remaining commenters offered qualified support for the rule, urging the Board to clarify or modify particular aspects of the rule. With the exception of a clarification of the provision concerning assessments for amounts that the Board of Governors pays to the FDIC due to any excess loss, the final rule is substantially unchanged from the proposed rule.¹ The comments are discussed in greater detail below.

Limitations on Availability

Paragraphs (a) and (b) of § 201.4 of the final rule describe the limitations on the availability of Federal Reserve Bank credit to undercapitalized and critically undercapitalized insured depository institutions, respectively. These limitations apply not only to advances under section 10B of the FRA, which permits advances secured to the satisfaction of the Federal Reserve Bank and which is the only type of advance to which section 142 applies, but also to discount window credit under other sections of the FRA, such as sections 13(2) and 13(8), that are not expressly covered by section 142. The one commenter addressing the scope of the limitations approved of their extension to all discount window credit.

In the case of an undercapitalized insured depository institution, the final rule provides that a Federal Reserve Bank may make or have outstanding advances to or discounts for a depository institution that it knows to be an undercapitalized insured depository institution only:

(1) If, in any 120-day period, the advances or discounts are not outstanding for more than 60 days during which the institution is an undercapitalized insured depository institution;

(2) During the 60 days after the receipt of a written certification of viability from the Chairman of the Board of Governors or the head of the appropriate Federal banking agency; or

(3) After consultation with the Board of Governors.

In the case of a critically undercapitalized insured depository institution, the final rule provides that a Federal Reserve Bank may make or have outstanding advances to or discounts for an institution that it knows to be a critically undercapitalized insured depository institution only during the five-day period beginning on the date the institution became a critically undercapitalized insured depository institution or after consultation with the Board of Governors.

In each case, the consultation requirement generally formalizes existing practices under which Federal Reserve Bank staff discuss significant advances to troubled institutions with the Board or Board staff. It also facilitates Board involvement in discount window assistance that may exceed the section 142 limits and trigger Board liability and a reporting requirement. There could be situations, however, in which it would be difficult or impossible for a Federal Reserve Bank to consult with the Board before extending credit that could exceed the section 142 limits. For example, a Federal Reserve Bank may not know that an institution has been critically undercapitalized for more than five days or may only learn this information at the time that the lending decision arises. The final rule, therefore, provides that in unusual circumstances when prior consultation with the Board is not possible, the Federal Reserve Bank should consult with the Board as soon as possible after the extension of credit.

The consultation requirement does not necessarily contemplate formal Board consideration of each extension of credit. In many cases, the requirement could be satisfied through a discussion of a Federal Reserve Bank's plans for dealing with a particular institution. In addition, the Board contemplates delegation of the authority to conduct such consultation to the Chairman, or in his absence, the Vice Chairman in order to facilitate that consultation. The Board is preparing a written policy delineating the consultation requirement.

Five commenters addressed the consultation requirement. Three of them generally endorsed the prior consultation requirement while the fourth commenter urged that the final rule require prior authorization. One of the commenters supporting prior consultation suggested that while the Board should reserve authority over macroeconomic decisions, the primary decision-making authority concerning individual lending decisions should remain with the lending Federal Reserve Bank. The fifth commenter urged that the Board and the Conference of Federal Reserve Bank Presidents come to a general agreement on discount window credit which may result in liability under section 142, especially if Federal Reserve Banks may be liable for another Federal Reserve Bank's lending decisions.

As established by the Federal Reserve Act, a Federal Reserve Bank has the authority to make a discount or advance to a depository institution while the Board of Governors is responsible for establishing policy for the Federal Reserve System and has supervisory authority over the Federal Reserve Banks. The Board believes that the final rule's prior consultation requirement preserves the Board's authority while maintaining Federal Reserve Bank capacity to respond to individual situations as they arise. The Board expects to continue to have close coordination with the Federal Reserve Banks on discount window policy. The current rule was developed in close collaboration with Federal Reserve Bank personnel and the Subcommittee on Discounts and Credits of the Conference of Presidents. The Board is continuing to work with Federal Reserve Bank personnel to develop coordinated approaches to concerning credit to undercapitalized or critically undercapitalized depository institutions.

The Loss Calculations

The final rule introduces three new definitions, "liquidation loss," "increased loss," and "excess loss," which together function to implement the liability provisions of section 142. The term "liquidation loss" refers to the amount of loss that the FDIC would have incurred if it had liquidated the depository institution at a particular point in time. The term "increased loss" refers to the amount of the FDIC's loss which exceeds the liquidation loss due to certain advances which remain outstanding or to new advances which are made after the time the FDIC would have liquidated the institution under the liquidation loss calculation. The

¹ The definition of undercapitalized insured depository institution has been changed to indicate that a depository institution is an undercapitalized insured depository institution if its appropriate Federal banking agency has rated it a CAMEL 5, or equivalent rating, as of the most recent examination of such institution; and the section on seasonal credit has been redrafted to improve clarity.

term "excess loss" refers to the amount of the increased loss for which the Board is liable to the FDIC under section 142. The one comment that the Board received on this section indicated that the regulation's loss calculations add clarity to the definitions in section 142.

Capital Category

Under section 142, the limitations on access to Federal Reserve Bank credit depend in part on the capital category—undercapitalized or critically undercapitalized—of the borrowing depository institution. These categories are defined in section 142 through reference to Federal banking agency ratings and through reference to the Prompt Corrective Action standards in section 38 of the Federal Deposit Insurance Act (FDI Act). Section 38 of the FDI Act largely leaves the definition of the capital categories to the Federal banking agencies. The Federal banking agencies define the categories in terms of capital ratios and link changes in capital categories to specific events (including the date that a Call Report is required to be filed, the delivery of an exam report, or the provision of written notice by the appropriate Federal banking agency). The final Regulation A, therefore, adopts the Prompt Corrective Action rules establishing capital categories, including the provisions defining when the categories become effective. This approach avoids linking changes in capital categories solely to day-to-day balance sheet fluctuations that would be impossible to track, is relatively simple, and is consistent with the Prompt Corrective Action standards. The two comments on these definitions favored the Board's approach.

The final rule also provides that a Federal Reserve Bank, before extending credit, should ascertain if an institution is an undercapitalized insured depository institution or a critically undercapitalized insured depository institution. One commenter expressed concern that it may be difficult to ascertain a depository institution's capital category and this commenter along with a second one expressed concern about information flows among Federal banking agencies. The Board is working with the other Federal banking agencies to ensure that Federal Reserve Banks have timely information concerning changes in institutions' capital categories.

Viability

Under section 142, a Federal Reserve Bank may extend discount window credit to an undercapitalized insured depository institution beyond 60 days in

a 120-day period if the head of the appropriate Federal banking agency or the Chairman of the Board of Governors of the Federal Reserve System, after an examination, certifies in writing that the institution is viable. An institution is viable under section 142 if, giving due regard to the economic conditions and circumstances in the market in which the institution operates, the institution is not critically undercapitalized, is not expected to become critically undercapitalized, and is not expected to be placed in conservatorship or receivership. This definition not only permits broad discretion in taking economic factors into account, but also allows widely varying levels of expectation as to whether an institution will become critically undercapitalized or be placed into conservatorship or receivership.

In order to provide some guidance to the other Federal banking agencies in making viability determinations, the final regulation states that although there are a variety of criteria for determining viability, the Board ordinarily would consider an undercapitalized institution to be viable if it had submitted a capital restoration plan as required under prompt corrective action, if its primary Federal regulator had accepted the plan, and if the institution is complying with the plan.

Two commenters approved of the Board's clarification of the term viable. One of these commenters noted, however, that a viable institution may require credit while it is in the process of preparing a capital plan or while its primary regulator is in the process of reviewing that plan. This commenter noted that an agricultural bank which suffers losses due to a natural disaster is an example of a viable institution which may need advances before it has an approved capital restoration plan in place.

Prompt corrective action allows a depository institution up to 45 days to submit a capital restoration plan and the appropriate Federal banking agency 60 days to approve the plan. Thus, the appropriate Federal banking agency may not have approved a depository institution's capital restoration plan before the limitations on the availability of credit become effective. While the Board believes that an undercapitalized institution should swiftly restore its capital, the Board also recognizes that a viable institution may not have a capital restoration plan in place before it reaches the borrowing limitations. In such cases, the Board or the appropriate Federal regulator should look to the statutory criteria to evaluate viability.

The third commenter on the definition of viability suggested that a distinction be drawn between undercapitalized and significantly undercapitalized depository institutions and that the latter class of institution be held to a more stringent standard of viability. The Board believes that the standard of viability should be a consistent standard. It recognizes, however, that, as a general matter, the lower a depository institution's capital, the more difficult it will be to demonstrate that the institution is viable.

Assessment

Under section 142, the Board is liable to the FDIC for certain losses due to Federal Reserve Bank lending to an undercapitalized or critically undercapitalized insured depository institution beyond the time periods specified in that section. The final regulation provides that the Board will assess the Federal Reserve Banks for the amount of any such loss. While the regulation does not specify an assessment formula, the supplementary material accompanying the proposed rule had indicated that the Board expected that any such loss would be assessed on all the Federal Reserve Banks on a *pro rata* basis rather than only on the Federal Reserve Bank making the advance.

Three of the commenters addressed the assessment on Federal Reserve Banks and all three of them proposed that the loss be borne by the lending Federal Reserve Bank. These commenters suggested that *pro rata* assessments would dilute the incentives intended by section 142, would reduce discipline in lending decisions, and would impose on a Federal Reserve Bank a share of the costs associated with lending decisions in which it played no role. Two of these commenters proposed that extremely large losses could be covered by the loss-sharing arrangement currently in effect among the Federal Reserve Banks and one noted that loss-sharing would prevent the Federal Reserve Banks from becoming too conservative in their lending decisions. This commenter also suggested that the Boards of Directors of the Federal Reserve Banks should be kept apprised of any potential liability under such a loss-sharing arrangement. Under the final rule, the Board expects that any assessment under section 142 will be levied on the lending Federal Reserve Bank unless the loss is large. Large losses will be covered in a manner analogous to the loss sharing agreement currently in effect among the Federal Reserve Banks.

One commenter inquired about assessments for losses due to lending to undercapitalized and critically undercapitalized credit unions. Because credit unions are not FDIC insured, there could be no loss to the FDIC insurance funds due to advances to or discounts for a credit union and thus there could be no Board liability to the FDIC for which the Board would have to assess the Federal Reserve Banks. Nonetheless the Board expects that similar standards in extending credit will be applied to credit unions.

Other

The Board also received a number of comments which addressed issues other than those raised by section 142 and the attendant amendments to Regulation A. For example, one commenter sought clarification of the reference, in § 201.3(b)(2), to an institution's average total deposits in the preceding calendar year. This section has been redrafted to improve clarity.

One commenter, while supporting the amendment to § 201.6(d) which would permit a Federal Reserve Bank to authorize a depository institution to act as an agent of another depository institution in receiving Federal Reserve Bank credit, proposed that the Board coordinate all lending to commonly controlled depository institutions through a lead Federal Reserve Bank in the banking organization's home Federal Reserve District. The Board believes that individual depository institutions are separate corporate entities with individual access to the discount window. The proposed change would permit, but not require, affiliated institutions to coordinate their borrowing through an individual Federal Reserve Bank, with the authorization of the lending Federal Reserve Bank.

This commenter also raised a number of questions concerning permissible types of collateral. Under the Federal Reserve Act, the collateralization of discount window advances is the primary responsibility of the individual Federal Reserve Banks. The Federal Reserve Banks generally are willing to accept collateral of adequate quality in which it can perfect a security interest. The commenter also proposed that the Board permit depository institutions to borrow against collateral held by operating subsidiaries, and that the procedures and criteria for Federal Reserve Bank credit be clarified and made uniform throughout the Federal Reserve Districts. Finally, the commenter proposed that the procedures and criteria for Federal Reserve Bank credit be based on market

practices. A high level of communication exists among the Federal Reserve Banks and between the Federal Reserve Banks and the Board and to the degree appropriate, the Federal Reserve Banks adhere to market standards in evaluating collateral. The Board does not believe, however, that it is appropriate at this time to restrict a Federal Reserve Bank's discretion in accepting or valuing collateral or in evaluating the enforceability of security interests. The Board also notes that the liquidation value of collateral may be lower than the market value of that collateral.

One commenter proposed that all Federal banking agencies be combined into one body. Such an action is beyond the scope of this Regulation.

Regulatory Flexibility Act Analysis

Pursuant to section 603 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board published for comment an initial regulatory flexibility analysis of its proposed Regulation A. Section 604 of the Regulatory Flexibility Act requires the Board to publish a final regulatory flexibility analysis with the final rule containing:

- (1) A statement of the need for and objectives of, the rule;
- (2) A summary of the issues revised by the public comment in response to the initial regulatory flexibility statement, a summary of the assessment if such comments and a statement of changes made in the proposed rule in response to comments;
- (3) A description of each of the significant alternatives to the rule consistent with the stated objectives of applicable statutes and designed to minimize any significant economic impact of the rule on small entities, and a statement of why these alternatives rejected.

Each of these items discussed in the Supplementary Information above.

List of Subjects in 12 CFR Part 201

Banks, banking, Credit.

For reasons set forth in the preamble, the Board is amending 12 CFR part 201 as follows:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

1. The authority citation for part 201 is revised to read as follows:

Authority: 12 U.S.C. 343 *et seq.*, 347a, 347b, 347c, 347d, 348 *et seq.*, 374, 374a and 461.

2. Sections 201.1 through 201.6 are revised and §§ 201.7 through 201.9 are added to read as follows:

§ 201.1 Authority, scope and purpose.

(a) *Authority and scope.* This part is issued under the authority of sections 10A, 10B, 13, 13A, and 19 of the FRA (12 U.S.C. 347a, 347b, 343 *et seq.*, 347c, 348 *et seq.*, 374, 374a, and 461), other provisions of the FRA, and section 7(b) of the International Banking Act of 1978 (12 U.S.C. 347d) and relates to extensions of credit by Federal Reserve Banks to depository institutions and others.

(b) *Purpose.* This part establishes rules under which Federal Reserve Banks may extend credit to depository institutions and others. Extending credit to depository institutions to accommodate commerce, industry, and agriculture is a principal function of Federal Reserve Banks. While open market operations are the primary means of affecting the overall supply of reserves, the lending function of the Federal Reserve Banks is an effective method of supplying reserves to meet the particular credit needs of individual depository institutions. The lending functions of the Federal Reserve System are conducted with due regard to the basic objectives of monetary policy and the maintenance of a sound and orderly financial system.

§ 201.2 Definitions.

For purposes of this part, the following definitions shall apply:

(a) *Appropriate Federal banking agency* has the same meaning as in section 3 of the FDI Act (12 U.S.C. 1813(q)).

(b) *Critically undercapitalized insured depository institution* means any insured depository institution as defined in section 3 of the FDI Act (12 U.S.C. 1813(c)(2)) that is deemed to be critically undercapitalized under section 38 of the FDI Act (12 U.S.C. 1831o(b)(1)(E)) and the implementing regulations.

(c) (1) *Depository institution* means an institution that maintains reservable transaction accounts or nonpersonal time deposits and is:

(i) An *insured bank* as defined in section 3 of the FDI Act (12 U.S.C. 1813(h)) or a bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(ii) A *mutual savings bank* as defined in section 3 of the FDI Act (12 U.S.C. 1813(f)) or a bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(iii) A *savings bank* as defined in section 3 of the FDI Act (12 U.S.C. 1813(g)) or a bank which is eligible to

make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(iv) An *insured credit union* as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752(7)) or a credit union which is eligible to make application to become an insured credit union pursuant to section 201 of such Act (12 U.S.C. 1781);

(v) A *member* as defined in section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422(4)); or

(vi) A *savings association* as defined in section 3 of the FDI Act (12 U.S.C. 1813(b)) which is an insured depository institution as defined in section 3 of the Act (12 U.S.C. 1813(c)(2)) or is eligible to apply to become an insured depository institution under section 5 of the Act (12 U.S.C. 1815(a)).

(2) The term *depository institution* does not include a financial institution that is not required to maintain reserves under Regulation D (12 CFR part 204) because it is organized solely to do business with other financial institutions, is owned primarily by the financial institutions with which it does business, and does not do business with the general public.

(d) *Liquidation loss* means the loss that any deposit insurance fund in the FDIC would have incurred if the FDIC had liquidated the institution:

(1) In the case of an undercapitalized insured depository institution, as of the end of the later of:

(i) Sixty days:

(A) In any 120-day period;

(B) During which the institution was an undercapitalized insured depository institution; and

(C) During which advances or discounts were outstanding to the depository institution from any Federal Reserve Bank; or

(ii) The 60 calendar day period following the receipt by a Federal Reserve Bank of a written certification from the Chairman of the Board of Governors or the head of the appropriate Federal banking agency that the institution is viable.

(2) In the case of a critically undercapitalized insured depository institution, as of the end of the 5-day period beginning on the date the institution became a critically undercapitalized insured depository institution.

(e) *Increased loss* means the amount of loss to any deposit insurance fund in the FDIC that exceeds the liquidation loss due to:

(1) An advance under section 10B(1)(a) of the FRA that is outstanding to an undercapitalized or critically undercapitalized insured depository

institution without payment having been demanded as of the end of the periods specified in paragraphs (d)(1) and (2) of this section; or

(2) An advance under section 10B(1)(a) of the Federal Reserve Act that is made after the end of such periods.

(f) *Excess loss* means the lesser of the increased loss or that portion of the increased loss equal to the lesser of:

(1) The loss the Board of Governors or any Federal Reserve Bank would have incurred on the amount by which advances under section 10B(1)(a) exceed the amount of advances outstanding at the end of the periods specified in paragraphs (d)(1) and (2) of this section if those increased advances had been unsecured; or

(2) The interest received on the amount by which the advances under section 10B(1)(a) exceed the amount of advances outstanding, if any, at the end of the periods specified in paragraphs (d)(1) and (2) of this section.

(g) *Transaction account and nonpersonal time deposit* have the meanings specified in Regulation D (12 CFR part 204).

(h) *Undercapitalized insured depository institution* means any insured depository institution as defined in section 3 of the FDI Act (12 U.S.C. 1813(c)(2)) that:

(1) Is not a critically undercapitalized insured depository institution; and

(2) (i) Is deemed to be undercapitalized under section 38 of the FDI Act (12 U.S.C. 1831o(b)(1)(C)) and the implementing regulations; or

(ii) Has received from its appropriate Federal banking agency a composite CAMEL rating of 5 under the Uniform Financial Institutions Rating System (or an equivalent rating by its appropriate Federal banking agency under a comparable rating system) as of the most recent examination of such institution.

(i) *Viable*, with respect to a depository institution, means that the Board of Governors or the appropriate Federal banking agency has determined, giving due regard to the economic conditions and circumstances in the market in which the institution operates, that the institution is not critically undercapitalized, is not expected to become critically undercapitalized, and is not expected to be placed in conservatorship or receivership.

Although there are a number of criteria that may be used to determine viability, the Board of Governors believes that ordinarily an undercapitalized insured depository institution is viable if the appropriate Federal banking agency has accepted a capital restoration plan for the depository institution under 12

U.S.C. 1831o(e)(2) and the depository institution is complying with that plan.

§ 201.3 Availability and terms.

(a) *Adjustment credit*. Federal Reserve Banks extend adjustment credit on a short-term basis to depository institutions to assist in meeting temporary requirements for funds or to cushion more persistent shortfalls of funds pending an orderly adjustment of a borrowing institution's assets and liabilities. Such credit generally is available only for appropriate purposes and after reasonable alternative sources of funds have been fully used, including credit from special industry lenders such as Federal Home Loan Banks, the National Credit Union Administration's Central Liquidity Facility, and corporate central credit unions. Adjustment credit is usually granted at the basic discount rate, but under certain circumstances a special rate or rates above the basic discount rate may be applied.

(b) *Seasonal credit*. Federal Reserve Banks extend seasonal credit for periods longer than those permitted under adjustment credit to assist smaller depository institutions in meeting regular needs for funds arising from expected patterns of movement in their deposits and loans. A special rate or rates at or above the basic discount rate may be applied to seasonal credit.

(1) Seasonal credit is only available if:

(i) The depository institution's seasonal needs exceed a threshold that the institution is expected to meet from other sources of liquidity (this threshold is calculated as certain percentages, established by the Board of Governors, of the institution's average total deposits in the preceding calendar year);

(ii) The Federal Reserve Bank is satisfied that the institution's qualifying need for funds is seasonal and will persist for at least four weeks; and

(iii) Similar assistance is not available from special industry lenders.

(2) The Board may establish special terms for seasonal credit when depository institutions are experiencing unusual seasonal demands for credit in a period of liquidity strain.

(c) *Extended credit*. Federal Reserve Banks extend credit to depository institutions under extended credit arrangements where similar assistance is not reasonably available from other sources, including special industry lenders. Such credit may be provided where there are exceptional circumstances or practices affecting a particular depository institution including sustained deposit drains, impaired access to money market funds, or sudden deterioration in loan repayment performance. Extended

credit may also be provided to accommodate the needs of depository institutions, including those with longer term asset portfolios, that may be experiencing difficulties adjusting to changing money market conditions over a longer period, particularly at times of deposit disintermediation. A special rate or rates above the basic discount rate may be applied to extended credit.

(d) *Emergency credit for others.* In unusual and exigent circumstances, a Federal Reserve Bank may, after consultation with the Board of Governors, advance credit to individuals, partnerships, and corporations that are not depository institutions if, in the judgment of the Federal Reserve Bank, credit is not available from other sources and failure to obtain such credit would adversely affect the economy. The rate applicable to such credit will be above the highest rate in effect for advances to depository institutions. Where the collateral used to secure such credit consists of assets other than obligations of, or fully guaranteed as to principal and interest by, the United States or an agency thereof, an affirmative vote of five or more members of the Board of Governors is required before credit may be extended.

§ 201.4 Limitations on availability and assessments.

(a) *Advances to or discounts for undercapitalized insured depository institutions.* A Federal Reserve Bank may make or have outstanding advances to or discounts for a depository institution that it knows to be an undercapitalized insured depository institution, only:

(1) If, in any 120-day period, advances or discounts from any Federal Reserve Bank to that depository institution are not outstanding for more than 60 days during which the institution is an undercapitalized insured depository institution; or

(2) During the 60 calendar days after the receipt of a written certification from the Chairman of the Board of Governors or the head of the appropriate Federal banking agency that the borrowing depository institution is viable; or

(3) After consultation with the Board of Governors.¹

(b) *Advances to or discounts for critically undercapitalized insured depository institutions.* A Federal Reserve Bank may make or have

¹ In unusual circumstances, when prior consultation with the Board is not possible, a Federal Reserve Bank should consult with the Board as soon as possible after extending credit that requires consultation under this paragraph.

outstanding advances to or discounts for a depository institution that it knows to be a critically undercapitalized insured depository institution only:

(1) During the 5-day period beginning on the date the institution became a critically undercapitalized insured depository institution; or

(2) After consultation with the Board of Governors.²

(c) *Assessments.* The Board of Governors will assess the Federal Reserve Banks for any amount that it pays to the FDIC due to any excess loss. Each Federal Reserve Bank shall be assessed that portion of the amount that the Board of Governors pays to the FDIC that is attributable to an extension of credit by that Federal Reserve Bank, up to one percent of its capital as reported at the beginning of the calendar year in which the assessment is made. The Board of Governors will assess all of the Federal Reserve Banks for the remainder of the amount it pays to the FDIC in the ratio that the capital of each Federal Reserve Bank bears to the total capital of all Federal Reserve Banks at the beginning of the calendar year in which the assessment is made, provided, however, that if any assessment exceeds 50 percent of the total capital and surplus of all Federal Reserve Banks, whether to distribute the excess over such 50 percent shall be made at the discretion of the Board of Governors.

(d) *Information.* Before extending credit a Federal Reserve Bank should ascertain if an institution is an undercapitalized insured depository institution or a critically undercapitalized insured depository institution.

§ 201.5 Advances and discounts.

(a) Federal Reserve Banks may lend to depository institutions either through advances secured by acceptable collateral or through the discount of certain types of paper. Credit extended by the Federal Reserve Banks generally takes the form of an advance.

(b) Federal Reserve Banks may make advances to any depository institution if secured to the satisfaction of the Federal Reserve Bank. Satisfactory collateral generally includes United States government and Federal agency securities, and, if of acceptable quality, mortgage notes covering 1-4 family residences, State and local government securities, and business, consumer and other customer notes.

(c) If a Federal Reserve Bank concludes that a depository institution will be better accommodated by the discount of paper than by an advance,

it may discount any paper endorsed by the depository institution that meets the requirements specified in the FRA.

§ 201.6 General requirements.

(a) *Credit for capital purposes.* Federal Reserve credit is not a substitute for capital.

(b) *Compliance with law and regulation.* All credit extended under this part shall comply with applicable requirements of law and of this part. Each Federal Reserve Bank:

(1) Shall keep itself informed of the general character and amount of the loans and investments of depository institutions with a view to ascertaining whether undue use is being made of depository institution credit for the speculative carrying of or trading in securities, real estate, or commodities, or for any other purpose inconsistent with the maintenance of sound credit conditions; and

(2) Shall consider such information in determining whether to extend credit.

(c) *Information.* A Federal Reserve Bank shall require any information it believes appropriate or desirable to insure that paper tendered as collateral for advances or for discount is acceptable and that the credit provided is used in a manner consistent with this part.

(d) *Indirect credit for others.* No depository institution shall act as the medium or agent of another depository institution in receiving Federal Reserve credit except with the permission of the Federal Reserve Bank extending credit.

§ 201.7 Branches and agencies.

Except as may be otherwise provided, this part shall be applicable to United States branches and agencies of foreign banks subject to reserve requirements under Regulation D (12 CFR part 204) in the same manner and to the same extent as depository institutions.

§ 201.8 Federal Intermediate Credit Banks.

A Federal Reserve Bank may discount for any Federal Intermediate Credit Bank agricultural paper or notes payable to and bearing the endorsement of the Federal Intermediate Credit Bank that cover loans or advances made under subsections (a) and (b) of section 2.3 of the Farm Credit Act of 1971 (12 U.S.C. 2074) and that are secured by paper eligible for discount by Federal Reserve Banks. Any paper so discounted shall have a period remaining to maturity at the time of discount of not more than nine months.

§ 201.9 No obligation to make advances or discounts.

A Federal Reserve Bank shall have no obligation to make, increase, renew, or

² See footnote 1 in § 201.4(a)(3).

extend any advance or discount to any depository institution.
3. In §§ 201.108 and 201.109, footnotes 1, 1a, 2, and 3 are redesignated

as footnotes 3, 4, 5, and 6, respectively.
By order of the Board of Governors of the Federal Reserve System, December 16, 1993.

William W. Wiles,
Secretary of the Board.
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