

**FEDERAL RESERVE BANK  
OF NEW YORK**

[ Circular No. **10714** ]  
June 16, 1994 ]

**REGULATION H**

**— Amendment Authorizing Certain Investments by  
State Member Banks in Bank Premises**

**— Proposed Amendment Authorizing Certain Investments  
by State Member Banks to Promote the Public Welfare**

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

The Board of Governors of the Federal Reserve System has amended its Regulation H, "Membership of State Banking Institutions in the Federal Reserve System," in order to permit a State member bank that meets certain conditions to invest in its own premises in an amount not exceeding 50 percent of its Tier 1 capital without obtaining specific Board approval. Enclosed — for member banks in this District and others who maintain sets of the Board's regulations — is the text of the amendment, which has been reprinted from the *Federal Register* of June 3.

In addition, the Board of Governors has also requested comment on a proposal to amend Regulation H in order to permit State member banks to make certain investments designed primarily to promote the public welfare without having to obtain specific Board approval. The proposal would also permit certain other public welfare investments with Board approval, and addresses the procedural aspects of either of those types of investments.

Printed on the following pages is the text of the proposal, which has been reprinted from the *Federal Register* of May 26; comments thereon should be submitted by July 22, and may be sent to the Board of Governors, as specified in the notice, or to our Banking Applications Department. Questions regarding either of these notices may also be directed to that Department (Tel. No. 212-720-5861).

**WILLIAM J. McDONOUGH,**  
*President.*



# Proposed Rules

Federal Register  
Vol. 59, No. 101  
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## FEDERAL RESERVE SYSTEM

### 12 CFR Part 208

[Regulation H; Docket No. R-0838]

### Membership of State Banking Institutions in the Federal Reserve System

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed rule.

**SUMMARY:** The Board is proposing to amend Regulation H to implement section 6(b) of the Depository Institutions Disaster Relief Act of 1992, which authorizes state member banks to make investments designed primarily to promote the public welfare to the extent permissible under state law and subject to regulation by the Board. The proposed amendment would permit state member banks to make certain public welfare investments without specific Board approval and other public welfare investments with specific approval. The proposed rule also addresses the procedural aspects of these investments.

**DATES:** Comments must be submitted on or before July 22, 1994.

**ADDRESSES:** Comments, which should refer to Docket No. R-0838, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to Room B-2223 between 8:45 a.m. and 5:15 p.m. All comments received at the above address will be made available to the public, and may be inspected at the Freedom of Information Office, Room B-1122 between 8:45 a.m. and 5:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Manley Williams, Attorney (202/736-5565), Legal Division; Sandra Braunstein, Program Manager for Community Affairs, (202/452-3378), Division of Consumer and Community Affairs; Larry Cunningham, Senior Financial Analyst (202/452-2701), Division of Banking Supervision and

Regulation, 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, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** Section 6(b) of the Depository Institutions Disaster Relief Act of 1992 added paragraph 23 to section 9 of the Federal Reserve Act, 12 U.S.C. 338a. Section 6(b) removes the restriction on the ability of state member banks to purchase, sell, underwrite, and hold investment securities provided that the investment is designed primarily to promote the public welfare and that the investment meets certain other criteria. Specifically, the investment must not violate state law or expose the bank to unlimited liability. The aggregate of the bank's public welfare investments must not exceed the sum of five percent of the bank's capital stock actually paid in and unimpaired and five percent of its unimpaired surplus fund. The Board may waive this limit by order, on a case-by-case basis, however, and permit a bank to make investments in an amount not exceeding the sum of ten percent of the capital stock actually paid in and unimpaired and ten percent of the unimpaired surplus fund of the bank. Finally, the Board must limit a bank's investments in any one project.

In the past, requests by state member banks to make public welfare investments have been dealt with on a case-by-case basis. To reflect section 6(b)'s amendment of the Federal Reserve Act and to facilitate public welfare investments under that section, the Board is publishing for comment an amendment to Regulation H to be incorporated in a new section entitled Community Development and Public Welfare Investments. This amendment would permit, in many cases, public welfare investments without Board approval.

### Core Public Welfare Investments

The proposed rule identifies classes of public welfare investments that do not require Board approval, leaving less common investments and investments of more than five percent of a bank's capital subject to case-by-case review. The proposed rule's classification seeks to distinguish public welfare investments from entrepreneurial

investments--section 6(b) merely states that public welfare investments include investments designed primarily to promote the welfare of low- and moderate-income communities or families. Under the proposed rule, a state member bank may invest, without Board approval, only in a corporation, limited partnership, or other entity established solely to engage in the following activities: low- and moderate-income housing; nonresidential real-estate development in a low- or moderate-income area if that real-estate is used primarily by low- and moderate-income persons; job training or placement for low- and moderate-income persons; small business development in a low- or moderate-income area; technical assistance and credit counseling to benefit community development; and job creation in a low- or moderate-income area for low- and moderate-income persons. The Board is particularly interested in comments on whether the test for low- and moderate-income housing should be based on whether a majority of the units are occupied by low- and moderate-income persons or on other Federal programs such as the low income housing credit in section 42 of the Internal Revenue Code.

In defining low- and moderate-income persons and low- or moderate-income area, the proposed rule uses definitions that will permit a state member bank to look to readily obtainable data. Specifically, the proposed rule uses the Department of Housing and Urban Development's Chapter 69 Community Development definition of low- and moderate-income persons. Similarly, low- or moderate-income area is defined as an area in which the median family income is less than eighty percent of the median family income of the Metropolitan Statistical Area, or, for non-metropolitan areas, the state. Finally, the proposed rule uses the Small Business Administration's definition of small business.

### Substantive Requirements

The proposed rule contains a number of substantive requirements based on section 6(b). Specifically, the investment must not violate state law or expose the bank to unlimited liability. In addition, without Board approval, a state member bank's aggregate public welfare investments must not exceed



the sum of 5 percent of the bank's capital stock actually paid in and unimpaired and 5 percent of the bank's unimpaired surplus fund. The Board has previously determined that undivided profits may be considered part of the capital stock and surplus of a state member bank (12 CFR 250.152). Accordingly, the proposed rule limits aggregate public welfare investments without Board approval to up to five percent of the capital stock and surplus of the state member bank.

Section 6(b) also requires that the Board limit investments by a state member bank in any one public welfare investment. Investment of up to two percent of the bank's capital and surplus would not threaten the safety or soundness of a well-run adequately-capitalized bank. In addition, previous community development investments by state member banks have not approached this ceiling. Accordingly, the proposed rule limits a state member bank to investing not more than two percent of its capital and surplus in a single investment without Board approval.

The proposed rule also establishes certain non-statutory substantive requirements for state member banks seeking to make public welfare investments without Board approval. Specifically, the bank must be at least adequately capitalized and rated a composite CAMEL "1" or "2", and the bank must not be subject to any written agreement, cease and desist order, capital directive, or prompt corrective action directive issued by the Board or a Federal Reserve Bank acting under delegated authority. These requirements help to ensure that the investment is consistent with the safe and sound operation of the bank.

**Procedural Requirements**

The proposed rule sets forth four procedural requirements. First, to keep Federal Reserve Banks apprised of public welfare investments, within 30 days after making a public welfare investment, a state member bank must advise its Reserve Bank of the amount of the investment and the identity of the corporation, limited partnership, or other entity in which the investment is made. Second, a bank seeking to make an investment that falls outside of the investments specified in the proposed rule must receive Board approval. In no event may aggregate investments exceed ten percent of the bank's capital stock and surplus. Third, if a public welfare investment entered into under the proposed rule ceases to meet the statutory requirements or any requirements established by the Board

in granting approval, the bank must divest itself of the investment to the extent that the investment ceases to meet those requirements.<sup>1</sup> Finally, if a preexisting public welfare investment meets the requirements for investments which do not need Board approval, or if the Board approved the investment, the bank need only notify its Reserve Bank of the investment within sixty days after the effective date of the final rule. For other preexisting public welfare investments, the bank should apply to the Board for approval of the investment within one year after the final rule's effective date.

**Bank Holding Company Investments**

In the event that the Board adopts a final rule permitting state member banks to make the proposed public welfare investments discussed above, the Board will consider revising its interpretation of Regulation Y to permit the same class of investments to be made by bank holding companies. If revised accordingly, a bank holding company could apply to make those investments under the existing expedited notice procedures.

To deal with proposed public welfare investments by state member banks during the pendency of the proposed rule, the Board has delegated to the Director of the Division of Bank Supervision and Regulation, in consultation with the General Counsel and the Director of the Division of Consumer and Community Affairs, the authority to approve investments that meet the requirements of the proposed rule.

**Regulatory Flexibility Act Analysis**

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Board certifies that the proposed amendment will not have a significant economic impact on a substantial number of small entities, and that any impact on those entities should be positive. The proposed amendments will reduce the regulatory burden for many state member banks by permitting them to make certain investments that had previously required Board approval, and will have no effect in other cases.

<sup>1</sup> This divestiture is governed by the same requirements as divestitures of interests acquired by a lending subsidiary of a bank holding company or a bank holding company itself in satisfaction of a debt previously contracted.

Divestiture is not required if the investment ceases to meet the non-statutory requirements concerning capital, CAMEL ratings, and enforcement actions.

**List of Subjects in 12 CFR Part 208**

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

For the reasons set forth in the preamble, the Board is proposing to amend 12 CFR part 208 as follows:

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

1. The authority citation for part 208 is revised 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-1, 3105, 3310, 3331-3351, and 3906-3909; 15 U.S.C. 1(b), 1(g), 1(i), 78b, 78o-4(c)(5), 78q, 78q-1, and 78w; 31 U.S.C. 5318.

2. Section 208.21 is added to subpart A to read as follows:

**§ 208.21 Community development and public welfare investments.**

(a) *Definitions*— (1) *Low- or moderate-income area* means:

(i) One or more census tracts in a Metropolitan Statistical Area where the median family income adjusted for family size in each census tract is less than eighty percent of the median family income adjusted for family size of the Metropolitan Statistical Area; or

(ii) If not in a Metropolitan Statistical Area, one or more census tracts or block-numbered areas where the median family income adjusted for family size in each census tract or block-numbered area is less than eighty percent of the median family income adjusted for family size of the State.

(2) *Low- and moderate-income persons* has the same meaning as low- and moderate-income persons as defined in 42 U.S.C. 5302a(20)(A).

(3) *Small business* means a business that meets the size eligibility standards of 13 CFR 121.802(a)(2).

(b) *Investments that do not require prior Board approval.* Notwithstanding the provisions of R.S. 5136, 12 U.S.C. 24 (Seventh) made applicable to State member banks by paragraph 20 of section 9 of the Federal Reserve Act (12 U.S.C. 335), a State member bank may make an investment, without prior Board approval, if the following conditions are met:

(1) The investment is in a corporation, limited partnership, or other entity:

(i) Where the Board has determined that an investment in that entity is a public welfare investment under paragraph 23 of section 9 of the Federal Reserve Act (12 U.S.C. 338a), or a



community development investment under Regulation Y (12 CFR 225.25(b)(6)); or

(ii) Where that entity engages solely in one or more of the following community development activities:

(A) Investing in, developing, rehabilitating, managing, selling, or renting residential property if a majority of the units will be occupied by low- and moderate-income persons;

(B) Investing in, developing, rehabilitating, managing, selling, or renting nonresidential real property or other assets located in a low- or moderate-income area and to be used primarily by low- and moderate-income persons;

(C) Investing in one or more small businesses located in a low- or moderate-income area to stimulate economic development;

(D) Investing in, developing, or otherwise assisting job training or placement facilities or programs that will be used primarily by low- and moderate-income persons;

(E) Investing in an entity located in a low- or moderate-income area if that entity creates long-term employment opportunities, a majority of which (based on full time equivalent positions) will be held by low- and moderate-income persons; and

(F) Providing technical assistance, credit counseling, research, and program development assistance to low- and moderate-income persons, small businesses, or nonprofit corporations to help achieve community development;

(2) The investment is permitted by State law;

(3) The investment will not expose the bank to liability beyond the amount of the investment;

(4) The investment does not exceed the sum of two percent of the bank's capital stock and surplus as defined under 12 CFR 250.162;

(5) The aggregate of all such investments of the bank does not exceed the sum of five percent of its capital stock and surplus as defined under 12 CFR 250.162;

(6) The bank is well capitalized or adequately capitalized under § 208.33(b)(1) and (2);

(7) The bank received a composite CAMEL rating of "1" or "2" under the Uniform Financial Institutions Rating System as of its most recent examination; and

(8) The bank is not subject to any written agreement, cease and desist order, capital directive, or prompt corrective action directive issued by the Board or a Federal Reserve Bank.

(c) *Notice.* Not more than 30 days after making an investment under paragraph

(b) of this section, the bank shall advise its Federal Reserve Bank of the investment, including the amount of the investment and the identity of the entity in which the investment is made.

(d) *Investments requiring Board approval.* With prior Board approval, a State member bank may make public welfare investments under paragraph 23 of section 9 of the Federal Reserve Act (12 U.S.C. 338a), other than those specified in paragraph (b) of this section.

(e) *Divestiture of investments.* A bank shall divest itself of an investment made under paragraph (b), (d) or (f) of this section to the extent that the investment exceeds the scope of, or ceases to meet, the requirements of paragraphs (b)(1) through (5), or paragraph (d) of this section. The divestiture shall be made in the manner specified in Regulation Y (12 CFR 225.140) for interests acquired by a lending subsidiary of a bank holding company or the bank holding company itself in satisfaction of a debt previously contracted.

(f) *Preexisting investments.* (1) For ongoing investments made prior to [the final rule's effective date] that are covered by paragraph (b) of this section, a State member bank shall notify its Federal Reserve Bank of the investment not more than sixty days after [the final rule's effective date].

(2) For other ongoing investments made prior to [the final rule's effective date], a State member bank shall request Board approval not more than one year after [the final rule's effective date].

By order of the Board of Governors of the Federal Reserve System, May 19, 1994.

William W. Wiles,  
Secretary of the Board.

[FR Doc. 94-12718 Filed 5-25-94; 8:45 am]

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10714

Board of Governors of the Federal Reserve System

AMENDMENT TO REGULATION H

Investing in Bank Premises

(Effective July 5, 1994)

**FEDERAL RESERVE SYSTEM**

**12 CFR Part 208**

[Regulation H; Docket No. R-0773]

**Membership of State Banking Institutions in the Federal Reserve System**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The Board is amending Regulation H to allow a state member bank that meets certain conditions to invest in its premises in an amount up to 50 percent of its Tier 1 capital without obtaining specific approval. The Board believes that a general approval for a state member bank to invest an amount not exceeding 50 percent of its Tier 1 capital is appropriate for a bank that meets those conditions. This action will significantly reduce the number of applications to invest in bank premises that are filed with the Board and will thereby reduce regulatory burden.

**EFFECTIVE DATE:** July 5, 1994.

**FOR FURTHER INFORMATION CONTACT:** Manley Williams, Attorney (202/736-5565), Legal Division; Richard Fabrizio, Senior Financial Analyst (202/452-3423); Beverly Evans, Supervisory Financial Analyst (202/452-2573); John Russell, Manager (202/452-2466), Division of Banking Supervision and Regulation, 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 Street NW., Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** Section 24A of the Federal Reserve Act, 12 U.S.C. 371d, requires a state member bank to obtain the approval of the Board to invest in the bank's premises if the aggregate level of direct and indirect investment in its premises will exceed the bank's capital stock account. Section 24A applies

(1) To investments in bank premises and to investments in the stock, bonds, debentures, or other such obligations of any corporation holding the premises of such bank,

(2) To the making of loans to or upon the security of the stock of any such

corporation; and

(3) To the indebtedness incurred by any corporation that is an affiliate of the bank.

The Board is amending Regulation H to allow a state member board that meets certain conditions to invest in bank premises in an amount that exceeds its capital stock account but not exceeding 50 percent of its Tier 1 capital without obtaining specific approval for the investment. Prior to this amendment, a state member bank was required to obtain Board approval for each investment in bank premises if the aggregate investment exceeded, or would exceed, the capital stock account of the state member bank.

The Board believes that investments by a state member bank in bank premises in an amount in excess of its stock account but not exceeding 50 percent of the bank's Tier 1 capital generally do not present any significant risks to the bank if the bank is well capitalized, is rated CAMEL "1" or "2", and is not subject to any written agreement, cease and desist order, capital directive. The Board believes that a general approval for a state member bank to invest an amount not exceed 50 percent of its Tier 1 capital its appropriate for a bank that meets those conditions. This action will significantly reduce the number of applications to invest in bank premises that are filed with the Board and will thereby reduce regulatory burden. The amendment does not affect state member banks' ability to invest in bank premises, without conditions, up to the amount of their capital stock account.

**Notice and Public Participation**

The provisions of 5 U.S.C. 553(b) relating to notice and public participation have not been followed in connection with the adoption of this amendment because the changes relate to rules of agency organization, procedure, or practice.

**Regulatory Flexibility Act Analysis**

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board certifies that the proposed amendment will not have a significant economic impact on a substantial number of small entities. The proposed amendment will reduce the regulatory burden for many small depository institutions by relieving them of the requirement to file an

application in certain cases, and will have no effect in other cases.

**List of Subjects in 12 CFR Part 208**

Accounting, Agriculture, Banks, Banking, Confidential business information, Currency, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

**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-1, 3105, 3310, 3331-3351, and 3906-3909; 15 U.S.C. 1(b), 1(g), 1(i), 78b, 78o-4(c)(5), 78q, 78q-1, and 78w; 31 U.S.C. 5318.

2. Section 208.22 is added to subpart A read as follows:

**§ 208.22 Investment in bank premises.**

(a) Under Section 24A of the Federal Reserve Act, state member bank investments in bank premises or in the stock, bonds, debentures, or other such obligations of any corporation holding the premises of the bank, and loans on the security of the stock of such corporation, do not require the approval of the Board if the aggregate of all such investments and loans, together with the indebtedness incurred by any such corporation that is an affiliate of the bank (as defined in section 2 of the Banking Act of 1933, as amended, 12 U.S.C. 221a):

(1) Does not exceed the capital stock account of the bank; or

(2) Does not exceed 50 percent of the bank's Tier 1 capital and the bank:

(i) Is well capitalized as defined in § 208.33(b)(1) of this part;

(ii) Received a composite CAMEL rating of "1" or "2" as of its most recent examination by the relevant Federal Reserve Bank or state regulatory authority; and

(iii) Is not subject to any written agreement, cease and desist order, capital directive, or prompt corrective action directive issued by the Board or a Federal Reserve Bank.

By order of the Board of Governors of the Federal Reserve System, May 25, 1994.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 94-13253 Filed 6-2-94; 8:45 am]

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