

**FEDERAL RESERVE BANK
OF NEW YORK**

[Circular No. **10780**
May 4, 1995]

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

— **Amendment on Mortgage Loans to Executive Officers**

— **Proposed Amendment on Definition of
Unimpaired Capital and Surplus**

Comments Due May 22 on Proposal

*To All State Member Banks and Bank Holding
Companies in the Second Federal Reserve District:*

The Board of Governors of the Federal Reserve System has amended its Regulation O, "Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks," to eliminate the requirement that prior approval of the board of directors be granted before a member bank may make a loan to an executive officer of that bank that is secured by a first lien on the executive officer's residence. This change was made to implement provisions of the Riegle Community Development and Regulatory Improvement Act. A copy of the amendment, effective April 7, 1995, as published in the *Federal Register*, is enclosed.

In addition, the Board of Governors has requested comment on a proposed amendment to Regulation O to conform its definition of unimpaired capital and unimpaired surplus to the definition of capital and surplus recently adopted by the Office of the Comptroller of the Currency in calculating the limit on loans by a national bank to a single borrower. The proposed rule would reduce the recordkeeping burden for member banks monitoring lending to their insiders and their related interests. The Board's notice in this matter, as published in the *Federal Register*, is printed on the following pages. Comments thereon should be submitted by May 22, 1995, and may be sent to the Board, as indicated in the notice, or to our Financial Examinations Function.

Questions regarding Regulation O may be directed to John A. Greco, Examining Officer (Tel. No. 212-720-8398).

WILLIAM J. McDONOUGH,
President.

FEDERAL RESERVE SYSTEM**12 CFR Part 215**

[Regulation O; Docket No. R-0875]

Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks; Loans to Holding Companies and Affiliates**AGENCY:** Board of Governors of the Federal Reserve System.**ACTION:** Proposed rule.

SUMMARY: The Board is proposing an amendment to Regulation O to conform the definition of unimpaired capital and unimpaired surplus in the regulation's definition of lending limit to the definition of capital and surplus recently adopted by the Office of the Comptroller of the Currency in calculating the limit on loans by a national bank to a single borrower. The proposed rule would reduce the recordkeeping burden for member banks monitoring lending to their insiders and their related interests.

DATES: Comments should be submitted on or before May 22, 1995.

ADDRESSES: Comments should refer to Docket No. R-0875, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Comments also may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street NW. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP-500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Gregory Baer, Managing Senior Counsel (202/452-3236), or Gordon Miller, Attorney (202/452-2534), Legal Division; or William G. Spaniel, Assistant to the Director (202/452-3469), 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).

SUPPLEMENTARY INFORMATION:**Background**

The Board's Regulation O (12 CFR Part 215) implements the insider lending prohibitions of section 22(h) of the Federal Reserve Act. Section 215.2(i)

of the regulation (12 CFR 215.2(i)) defines the limit for loans to any insider of a member bank and insider of the bank's affiliates as an amount equal to the limit on loans to a single borrower established by the National Bank Act (12 U.S.C. 84). That amount is 15 percent of the bank's unimpaired capital and unimpaired surplus for loans that are not fully secured, and an additional 10 percent of the bank's unimpaired capital and unimpaired surplus for loans that are fully secured by certain readily marketable collateral.¹

Although Regulation O adopts the percentage limits used in the National Bank Act, Regulation O provides its own definition of what constitutes unimpaired capital and unimpaired surplus. Unimpaired capital and unimpaired surplus are equal to the sum of (i) "total equity capital" as reported on the bank's most recent consolidated report of condition, (ii) any subordinated notes and debentures that comply with requirements of the bank's primary regulator for inclusion in the bank's capital structure and are reported on the bank's most recent consolidated report of condition, and (iii) any valuation reserves created by charges to the bank's income and reported on the bank's most recent consolidated report of condition. 12 CFR 215.2(i).

The Office of the Comptroller of the Currency (OCC) has recently revised its regulatory definition of unimpaired capital and unimpaired surplus for purposes of implementing the single borrower limit of the National Bank Act. See 59 FR 8533, February 15, 1995. Under that revised definition, a national bank's "capital and surplus" are equal to Tier 1 and Tier 2 capital included in the calculation of the bank's risk-based capital together with the amount of the bank's allowance for loan and lease losses not included in this calculation. 12 CFR 32.2(b).

The Board is proposing to amend Regulation O to conform its definition of unimpaired capital and unimpaired surplus to the OCC's revised definition of capital and surplus. In substantially all cases, the Board believes that calculating the insider lending limits of Regulation O using the revised definition would not significantly increase or decrease a bank's insider lending limit. The elimination of the separate definition of unimpaired capital and unimpaired surplus in Regulation O therefore is expected to

¹ The lending limit also includes any higher amounts that are permitted by the exceptions included in 12 U.S.C. 84. Where state law establishes a lower lending limit for a state member bank, that lower lending limit is the lending limit for the state member bank.

create minimal disruption in lending by member banks to their insiders and to insiders of their affiliates, while eliminating duplication in the calculation of lending limits for national banks and for state member banks with state lending limits identical to national bank lending limits.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis (5 U.S.C. 603(b))—a description of the reasons why the action by the agency is being considered and a statement of the objectives of, and legal basis for, the proposed rule—are contained in the supplementary information above.

Another requirement for the initial regulatory flexibility analysis is a description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply. The proposed rule would apply to all member banks, regardless of size. The Board has determined that its proposed rule would impose no additional reporting or recordkeeping requirements, and that there are no relevant federal rules that duplicate, overlap, or conflict with the proposed rule. In addition, the proposed rule is not expected to have a negative economic impact on small institutions. Instead, the proposed rule is expected to relieve the regulatory burden on a large majority of member banks.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507; 5 CFR 1320.13), the Board will review its proposed amendment to Regulation O under authority delegated to the Board by the Office of Management and Budget after considering comments received during the public comment period.

List of Subjects in 12 CFR Part 215

Credit, Federal Reserve System, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 215 as set forth below:

PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS (REGULATION O)

1. The authority citation for part 215 continues to read as follows:

Authority: 12 U.S.C. 248(i), 375a(10), 375b (9) and (10), 1817(k)(3) and 1972(2)(G)(ii); Pub. L. 102-242, 105 Stat. 2236.

2. Section 215.2 is amended as follows:

a. The last sentence of paragraph (i) introductory text is revised;

b. Paragraphs (i)(1) and (i)(2) are revised; and

c. Paragraph (i)(3) is removed.

The revisions read as follows:

§ 215.2 Definitions.

* * * * *

(i) * * * A member bank's unimpaired capital and unimpaired surplus equals:

(1) A bank's Tier 1 and Tier 2 capital included in the bank's risk-based capital under the capital guidelines of the appropriate Federal banking agency, based on the bank's most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3); and

(2) The balance of a bank's allowance for loan and lease losses not included in the bank's Tier 2 capital for purposes of the calculation of risk-based capital by the appropriate Federal banking agency, based on the bank's most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3).

* * * * *

By order of the Board of Governors of the Federal Reserve System, April 14, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-9737 Filed 4-19-95; 8:45 am]

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Board of Governors of the Federal Reserve System
LOANS TO EXECUTIVE OFFICERS, DIRECTORS,
AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS

Amendment to Regulation O
(Effective April 7, 1995)

FEDERAL RESERVE SYSTEM

12 CFR Part 215

[Regulation O; Docket No. R-0874]

Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks; Loans to Holding Companies and Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is revising Regulation O to implement a recent amendment to section 22(g) of the Federal Reserve Act, contained in the Riegle Community Development and Regulatory Improvement Act of 1994. The revision provides that prior approval of the board of directors is not required before a member bank may make a loan to an executive officer that is secured by a first lien on the executive officer's residence.

EFFECTIVE DATE: April 7, 1995.

FOR FURTHER INFORMATION CONTACT: Gordon Miller, Attorney (202/452-2534), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION

Background

The Riegle Community Development and Regulatory Improvement Act of 1994 (CDR Act), Pub. L. 103-325, 108 Stat. 2160 (1994), effective September 23, 1994, amended section 22(g) of the Federal Reserve Act, 12 U.S.C. 375a, to eliminate the requirement that prior approval of the board of directors be granted before a member bank may make a loan to an executive officer of the member bank that is secured by a first lien on the executive officer's residence. Such loans remain subject to the general requirement for prior approval under section 22(h) of the Federal Reserve Act. See 12 U.S.C. 375b(3); 12 CFR 215.4(b). The Board is revising Regulation O (12 CFR Part 215),

effective April 7, 1995, to conform to the amendment.

Need for Final Rule Without Comment

The elimination of the prior approval requirement for loans to an executive officer secured by a first lien on the executive officer's residence was effective immediately upon enactment of the CDR Act, and required no action on the part of the Board to take effect. The Board therefore finds that it is necessary to revise Regulation O in order to eliminate a requirement that is superseded by the CDR Act, and to clarify that member banks may take advantage of the recent amendment to section 22(g) of the Federal Reserve Act.

The Board, for good cause, finds that the notice and public comment procedure normally required is impractical, unnecessary, and contrary to the public interest under 5 U.S.C. 553(b)(B). The Board further finds under 5 U.S.C. 553(d)(1) that the final rule is a substantive rule that relieves a restriction on lending and therefore is making the final rule effective on April 7, 1995, without regard for the 30-day period provided for in 5 U.S.C. 553(d).

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to publish a final regulatory flexibility analysis at the time it promulgates a final rule. One of the requirements of a final regulatory flexibility analysis, a succinct statement of the need for, and objectives of, the final rule (5 U.S.C. 604(a)(1)), is contained in the supplementary information above. For the reasons stated above concerning the need for public comment, the Board has not sought public comment on the final rule, and the Board has not considered any alternatives to the final rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3507, and 5 CFR 1320.130, the Board, under authority delegated by the Office of Management and Budget, has reviewed

its amendments to Regulation O. The Board has determined that its final rule imposes no additional reporting or recordkeeping requirements, and that there are no relevant federal rules that duplicate, overlap, or conflict with the proposed rule. The final rule will apply to all member banks, regardless of size. The final rule should not have a negative economic impact on small institutions. Instead, the rule should relieve the regulatory burden on all member banks.

List of Subjects in 12 CFR Part 215

Credit, Federal Reserve System, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board is amending 12 CFR Part 215, as set forth below:

PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS (REGULATION O)

1. The authority citation for part 215 continues to read as follows:

Authority: 12 U.S.C. 248(i), 375a(10), 375b(9) and (10), 1817(k)(3) and 1972(2)(G)(ii); Pub. L. 102-242, 105 Stat. 2236.

2. In § 215.5, paragraph (c)(2) introductory text is revised to read as follows:

§ 215.5 Additional restrictions on loans to executive officers of member banks.

* * * * *

(c) * * *

(2) In any amount to finance or refinance the purchase, construction, maintenance, or improvement of a residence of the executive officer, provided:

* * * * *

By order of the Board of Governors of the Federal Reserve System, April 3, 1995.

William W. Wiles,
Secretary of the Board.

[FR Doc. 95-8578 Filed 4-6-95; 8:45 am]

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