17:9A-22 et al

LEGISLATIVE HISTORY CHECKLIST

NJSA 17:9A-22 et al. (Banking Act of 1948--various amendments)

LAWS OF 1979 CHAPTER 226

Bill No. A1380

Sponsor(s) Stewart

Date Introduced May 15, 1978

Committee: Assembly Banking and Insurance

Senate Labor, Industry and Professions

Amended during passage Yes xx Amendments during passage denoted by asterisks

Date of Passage: Assembly Oct. 19, 1978

Senate June 21, 1979

Date of approval Oct. 12, 1979

Following statements are attached if available:

| | | | |
|---|---|---|---|
| Sponsor statement | | Yes | xx |
| Committee Statement: | Assembly | Yes | xx |
| | Senate | Yes | xx |
| Fiscal Note | | xx | No |
| Veto Message | | xx | No |
| Message on signing | | xx | No |
| Following were printed. | | | |
| Reports | | xx | No |
| Hearings | | xx | No |

Federal Reserve Board Regulation O (attached)



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[SECOND OFFICIAL COPY REPRINT]

# ASSEMBLY, No. 1380

# STATE OF NEW JERSEY

INTRODUCED MAY 15, 1978

By Assemblyman STEWART

Referred to Committee on Banking and Insurance

AN ACT to amend and supplement "The Banking Act of 1948" approved April 29, 1948 (P. L. 1948, c. 67).

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 22 of P. L. 1948, c. 67 (C. 17:9A–22) is amended to read as follows:

22. Change of principal or branch office; application; approval.

A. Upon filing an application therefor in the department, and upon obtaining the approval of the commissioner thereto a bank or savings bank may change the location of its principal office or of a branch office to a location within the same municipality in which such principal office or such branch office is located, and may change the location of its principal office to **[**another**]** *a location in a* municipality **[**located within the same banking district, as defined in section 19, as**]** *other than* that in which it maintains its principal office, but not more than 30 miles distant **[**therefrom**]** *from such principal office.*

B. If it shall appear from the application, or if the commissioner shall find from such proof as he may require, or from such investigation as he may cause to be made, that the area which would be served by such office after its change in location would not be substantially different from the area theretofore served by such office, he shall approve the application.

C. If it shall appear to the commissioner, from the application, or from such proof as he may require, or from such investigation as he may cause to be made, that the proposed location will be so far removed from the place then occupied by such principal office or by such branch office that the area which would be served by such office after its change in location would be substantially different from the area theretofore served by it, he shall not approve such application

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

unless, after such investigation or hearing, or both, as the commissioner may determine to be advisable, he shall find that the interests of the public will be served to advantage by such change in location, and that conditions in the locality to which removal is proposed afford reasonable promise of successful operation.

D. No bank shall change the location of its principal office pursuant to subsection C of this section unless, following the approval of the commissioner, it shall amend its certificate of incorporation to effect such change. No savings bank shall change the location of its principal office pursuant to subsection C of this section unless, prior to making application to the commissioner for his approval, the change in location is approved by a vote of two-thirds of its board of managers then in office.

2. Section 71 of P. L. 1948, c. 67 (C. 17:9A–71) is amended to read as follows:

71. Definitions.

*A.* For the purposes of this article:

(1) "Controlling interest" means ownership or control of a majority of the issued and outstanding capital stock or securities of a corporation, having voting rights;

(2) "Corporation" means a corporation in which a director or an *executive* officer of a bank has a controlling interest or in which a director or an *executive* officer of a bank together with one or more other directors or *executive* officers of the bank has a controlling interest; "corporation" includes all subsidiaries of a corporation in which the corporation has a controlling interest;

(3) "*Executive* officer" [includes] *means* only those officers of a bank who participate [in the operating management of the bank] *in major policy-making functions of the bank* otherwise than in the capacity of a director of the bank; [.]; [The commissioner shall have power to make regulations prescribing what constitutes participation in the operating management of a bank for the purposes of this section;]

(4) "Partnership" means a partnership in which a director or an *executive* officer of a bank is a general or limited partner;

(5) "Liability" means indebtedness and liability to a bank of every kind and in every capacity, other than liability in a fiduciary capacity in which the fiduciary may lawfully incur such liability without personal responsibility therefore; "liable" means obligated for a liability;

(6) "Board of directors" means at least a majority of the members of the board of directors of a bank, and "executive committee" means at least a majority of the members of the executive committee of the board of directors;

(7) "Application" means a written, signed request by a director or an *executive* officer [or] *of* a bank, or by a corporation or partnership, to be permitted to incur liability to the bank, and "applicant" means the signer of an application;

(8) Liability to a bank, payable on demand, shall be deemed to have a maturity 6 months from the date of incurring such liability;

(9) Any whole or part renewal or extension of any liability to a bank incurred pursuant to this article shall be deemed to be an initial incurring of liability to the bank.

*(10) "Officer" means any officer other than an executive officer who participates in the operating management of a bank.*

*B. The commissioner may, from time to time, make, amend and repeal regulations*, including* (1) *[altering the definition of "executive officer" as stated in paragraph (3) of subsection A of this section; (2)]* prescribing what constitutes "policy-making" within the meaning of paragraph *[(3)]* **[*(2)*]** **(3)** of subsection A of this section; and **[(3)]** **(2)** increasing or decreasing the total amount in which an executive officer of a bank may become liable to the bank as prescribed by paragraph (2) of subsection B of section 72 (C. 17:9A–72); and *[(4)]* *(3)* prescribing limitations on the liabilities to a bank which an officer who is not an executive officer of such bank may be permitted to incur to such bank. Regulations made pursuant to this article shall be directed toward creating and maintaining a substantial parity between banks and national banks in prescribing the amount in which a bank may permit an executive or other officer to become liable to it.*

3. Section 72 of P. L. 1948, c. 67 (C. 17:9A–72) is amended to read as follows:

72. Prerequisites to incurring liability; amounts.

A. No bank shall permit a director or an *executive* officer of the bank or a corporation or partnership to become liable to the bank, and no such director, *executive* officer, corporation or partnership shall become liable to a bank, except as authorized by this article.

B. A bank may permit a director or an *executive* officer of the bank or a corporation or a partnership to become liable to the bank provided that:

(1) An application for the incurring of the proposed liability, containing such information as the commissioner may by regulation require, shall first be approved by resolution of the board of directors or of the executive committee; such resolution and the vote of each person thereon shall be recorded in the minutes of the meeting;

(2) If the applicant is an *executive* officer, the proposed liability will not cause the total of all liabilities of such officer to the bank to exceed **[$5,000.00]** ***$10,000.00*** *, *or such amount as is permitted by the Commissioner of Banking pursuant to subsection B. of section 71 of P. L. 1948, c. 67 (C. 17:9A–71); provided, however, that such amount is consonant with the amount fixed by Federal law for national banks and establishes a substantial parity between those banks and State-chartered **[*institutions*]** * ***banks***;

(3) If the applicant is a director, corporation or partnership, the bank shall be offered security having an ascertainable market value at least 20% greater than the amount of the proposed liability, or, if no such security or only partial security is offered, the proposed unsecured liability or the portion thereof for which no security is offered is, in the opinion of the board of directors or the executive committee, warranted by a written statement of the financial condition of the applicant;

(4) The proposed liability will not cause the total of

(a) The liabilities of a director or an *executive* officer, and

(b) The liabilities of each corporation in which such director or *executive* officer has a controlling interest, or in which such director or *executive* officer together with one or more other directors or *executive* officers has a controlling interest, and

(c) The liabilities of each partnership in which such director or *executive* officer is a partner to exceed 10% of [the aggregate of the unimpaired capital stock, the surplus, and the undivided profits of the bank] *the amount of the capital funds of the bank, as defined in section 60.*

C. When an application is made by a director of a bank or by a corporation or partnership, the applying director and any director who alone or with any one or more other directors or *executive* officers of the bank has a controlling interest in the corporation, and any director who is a general or limited partner in the partnership shall not vote to grant such application.

D. When an application is approved by the executive committee, the application shall be presented and the approving resolution of the executive committee shall be read at the next meeting of the board of directors, and such presentation and reading shall be noted in the minutes of such meeting.

4. Section 73 of P. L. 1948, c. 67 (C. 17:9A–73) is amended to read as follows:

73. Overdrafts.

No bank shall permit a director, *executive or other* officer or employee of the bank or a corporation, or a partnership, to become

liable to the bank by overdraft against a deposit account. *This section shall not apply to extensions of credit made pursuant to "The Advance Loan Law of 1968," P. L. 1968, c. 64.*

5. Section 74 of P. L. 1948, c. 67 (C. 17:9A–74) is amended to read as follows:

74. Exempt transactions.

A. Any liability incurred prior to the effective date of this act which would, if incurred after the effective date of this act, be subject to this article, may from time to time be wholly or partly renewed to the extent and in the manner authorized by the law in effect when such liability was initially incurred.

B. Nothing in this article shall apply to a mortgage loan made by a bank [under Article 14] to an *executive* officer of the bank or to him or her and his or her spouse, if (1) the mortgaged property has erected thereon a one or 2-family dwelling occupied or to be occupied wholly or partly by such officer, or (2) *if* the proceeds of the loan shall be used for the purpose of erecting upon the mortgaged property a one- or two-family dwelling to be so occupied*; nor shall anything in this article apply (3) to any loan or loans made to an executive officer of the bank not exceeding in the aggregate* **[*$10,000.00*]** ***$20,000.00*** *outstanding at any one time to finance the educatin of a child or children of such officer; or (4) to any liability to a bank incurred by any officer who is not an executive officer of such bank.*

6. Section 75 of P. L. *[1947]* **1948***, c. 67 (C. 17:9A–75) is amended to read as follows:

75. Violations; penalties; liability.

A. The following shall be guilty of misdemeanors:

(1) A director, or an *executive* officer of a bank who knowingly incurs liability to the bank in violation of subsections B and C of section 72;

(2) Any person who knowingly permits or aids a director, or an *executive* officer of a bank or a corporation or partnership to incur liability to a bank in violation of subsections B and C of section 72;

(3) A director of a bank who votes in favor of an application presented to the bank by such director or by a corporation in which such director alone, or with one or more directors or officers of the bank, has a controlling interest, or by a partnership of which such director is a general or limited partner, if, pursuant to such application, liability is incurred in violation of subsections B and C of section 72;

(4) A director or an *executive* officer of a bank who, alone, or with one or more directors or *executive* officers of the bank, has a controlling interest in a corporation or who is a general or limited partner of a partnership which presents an application to the bank pursuant to which liability is incurred in violation of subsections B and C of section 72 and who, having knowledge of such application prior to its acceptance, fails to disclose his interest to the executive committee or the board of directors prior to such acceptance.

B. Each person described in paragraphs (2), (3), and (4) of subsection A of this section shall be personally liable on demand to the bank for the liability incurred in violation of subsections B and C of section 72, with interest, and, upon payment thereof, shall be subrogated to the rights of the bank.

7. Section 49 of P. L. 1948, c. 67 (C. 17:9A–49) is amended to read as follows:

49. Definitions. For the purposes of this article,

(1) "Reserve depositary" includes

(a) A Federal Reserve bank,

(b) A member of a Federal Reserve bank organized in a Federal Reserve district which includes all or any part of this State, which shall be approved by the commissioner as a reserve depositary,

(c) A bank which is not a member of the Federal Reserve System, but which shall be approved by the commisisoner as a reserve depositary, and

(d) A member of a Federal Reserve bank organized in a Federal reserve district which does not include all or any part of this State; provided, such member [maintains its principal office in a city in which a Federal Reserve bank has its main office or a branch office, and] is approved by the commissioner as a reserve depositary;

(2) "Immediate liabilities" shall include all deposits payable on demand, or in less than 30 days, or in less than 30 days after demand, and all other claims payable on demand;

(3) "Time liabilities" shall include all liabilities other than immediate liabilities;

(4) The commissioner, with the concurrence of the banking advisory board, may from time to time modify or supplement the definitions of immediate liabilities and time liabilities as set forth in this section, except that demand deposits shall always be included in the definition of immediate liabilities and time deposits shall always be included in the definition of time liabilities.

8. (New section) In addition to the powers which banks and savings banks may otherwise exercise, every bank and savings bank, as defined in section 1 of The Banking Act of 1948, P. L. 1948, c. 67, shall have power to subscribe for, purchase and hold stock of one or more insurance companies organized under the laws of this State which have been or may hereafter be **[organized]** ***limited*** to insure banks, savings banks and other depository institutions *(1)* against loss from the defaults of persons in positions of trust, public or private, or against loss or damage on account of neglect or breaches of duty or obligations guaranteed by the insurer; and against loss of any bills of exchange, notes, checks, drafts, acceptances of drafts, bonds, securities, evidences of debt, deeds, mortgages, documents, gold or silver, bullion, currency, money, platinum and other precious metals, refined or unrefined and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, precious and semiprecious stones, and also against loss resulting from damage, except by fire, to the insured's premises, furnishings, fixtures, equipment, safes and vaults therein caused by burglary, robbery, hold-up, theft or larceny, or attempt thereat. No such indemnity indemnifying against loss of any property as specified herein shall indemnify against the loss of any such property occurring while in the mail or in the custody or possession of a carrier for hire for the purpose of transportation, except for the purpose of transportation by an armored motor vehicle accompanied by one or more armed guards; and

(2) Against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism or malicious mischief, or any one or more of such hazards; and against any and all kinds of loss or destruction of or damage to moneys, securities, currencies, scrip, coins, bullion, bonds, notes, drafts, acceptances of drafts, bills of exchange and other valuable papers or documents, except while in the custody or possession of and being transported by a carrier for hire or in the mail.

*[9. Section 115 of P. L. 1948, c. 67 (C. 17:9A–115) is amended to read as follows:

115. Bonding of directors, officers, employees.

Every bank shall, at its own expense, cause to be bonded for the honest performance and discharge of his duties (1) each director who handles or has charge or custody of money, securities or other valuable property of the bank or of its customers and (2) all officers and employees of the bank, in such amount and with such surety as shall be approved by the board of directors. The bonds may be individual bonds or may be one or more blanket bonds issued by a

surety company or companies or one or more underwriters. The board of directors shall annually examine all such bonds, shall pass upon their sufficiency and may require a new bond or bonds or increases in the amounts thereof. The commissioner may from time to time order an increase in the amount of any such bonds. No bond shall be deemed to comply with the requirements of this section unless such bond contains a provision that it shall not be cancellable for any cause unless notice of intention to cancel is filed in the department at least five days before the day upon which cancellation shall take effect.

*The commissioner may, in his discretion, waive the provisions of this section pursuant to such terms and conditions that will adequately protect the bank and its customers.*]*

*[10.]* *9.* This act shall take effect immediately.

to time order an increase in the amount of any such bonds. No bond shall be deemed to comply with the requirements of this section unless such bond contains a provision that it shall not be cancellable for any cause unless notice of intention to cancel is filed in the department at least five days before the day upon which cancellation shall take effect.

*The commissioner may, in his discretion, waive the provisions of this section pursuant to such terms and conditions that will adequately protect the bank and its customers.*

10. This act shall take effect immediately.

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STATEMENT

This bill would amend the Banking Act of 1948, as amended and supplemented, to:

(1) Remove obsolete references to banking districts which no longer exist.

(2) Remove limitations on loans to junior officers which are more stringent than those imposed on national banks and to make such limitations consistent with the Federal law.

(3) Give the Banking Commissioner added discretion in designating reserve depositories, and

(4) Permit banks to own or organize companies which provide blanket bond and other insurance protection for banks. Banks could use this power in the event such insurance is not otherwise available for their protection. Virginia and Florida have similar laws.

(5) Give the Banking Commissioner flexibility in providing for methods to protect a bank and bank customers against the dishonesty of bank directors, officers and employees.

A. 1380 (1979)

ASSEMBLY BANKING AND INSURANCE COMMITTEE

STATEMENT TO

# ASSEMBLY, No. 1380

# STATE OF NEW JERSEY

DATED: OCTOBER 5, 1978

This legislation contains a number of provisions to amend and to supplement "The Banking Act of 1948" (P. L. 1948, c. 67). The bill modifies section 22 of the law regarding change of location of a principal office to conform to the amendments to the Banking Act which permitted statewide branch banking.

The legislation also regulates loans to officers. It makes a distinction between executive officers, who have a policy-making function, and other officers. Executive officers would be permitted to borrow up to $5,000.00 and other officers up to $10,000.00. Certain kinds of loans, such as mortgage loans, educational loans, and overdraft checking loans would be exempted from this provision. The Commissioner of Banking would be permitted to adjust the $5,000.00 figure to establish parity with Federal law.

The bill also deletes the requirement that Federal Reserve member banks organized in a Federal district which does not include all or any part of New Jersey may be reserve depositories only if they maintain their principal office in a city in which a Federal Reserve bank has its main office or branch office.

The bill provides that banks and savings banks may have the power to subscribe for or hold stock of an insurance company organized under the laws of New Jersey which is organized to insure banks, savings banks, and other depository institutions against loss from defaults in positions of trust, or against loss or damage on account of neglect or breaches of duty or obligations guaranteed by the insurer, as well as against loss of financial instruments and valuables, and against loss resulting from damage, except by fire, to the insured's premises. The bill gives the commissioner the authority to waive the bonding requirement for directors, officers and employees established by section 115 of the Banking Act of 1948 pursuant to such terms and conditions as will adequately protect the bank and its customers.

The first provision of the bill, regarding branching, is to make section 22 of P. L. 1948, c. 67 conform to the provisions of the statewide branch-

ing law. The provisions regarding loans to officers are intended to establish parity between State-chartered and federally chartered banks. The bill would also permit that depository institutions may form or invest in an insurance company to insure against certain types of losses, and to provide for bonding of their employees. Certain types of insurance, notably surety bonds, are increasingly difficult to obtain through regular market channels.

The amendments, technical in nature, provide for clarification of the power of the commissioner with respect to his authority to adjust the amount of money permitted to be loaned to executive officers, and clarifies the distinction between "officer" and "executive officer".

The amendments also delete the final section of the bill, which permit the commissioner to waive bonding requirements established by law. This has been deleted because the committee has also reported Assembly Bill No. 1631, which accomplishes the same purpose.

SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

STATEMENT TO

# ASSEMBLY, No. 1380

[OFFICIAL COPY REPRINT]

with Senate committee amendments

# STATE OF NEW JERSEY

DATED: MAY 24, 1979

The statement of the Assembly Banking and Insurance Committee adequately explains the provisions of the bill.

The Senate Labor, Industry and Professions Committee made the following amendments:

Technical amendments were necessary because of an error in section 2, lines 45 and 46, where subsection numbers had been transposed.

In sections 3 and 5, dollar amounts were changed to make the limits consistent with Federal Reserve Board Regulation O, revised March 23, 1979.

The amendment to section 8 was to clarify the fact that any insurance company formed pursuant to the act would insure only banks.

*A. The Cooperator Agrees*

1. a. To deposit with the Service upon execution of this agreement the amount of — (equal to the established fee multiplied by the number of cattle for which an import permit is to be issued to the cooperator) to cover the cost to the Department to qualify animals in the foreign country for entrance into the Harry S. Truman Animal Import Center and the quarantine period at that facility and to qualify the cattle for importation into the United States, or;

b. To deposit with the Service upon execution of this agreement a payment bond in the amount of — (equal to the established fee multiplied by the number of cattle for which an import permit is to be issued to the Cooperator). Payment will be due one month prior to the day the cattle are scheduled to be released from quarantine. The bond shall be in effect from the date of the issuance of the import permit to the date the cattle are released from quarantine or otherwise disposed of. This time is estimated to be for not less than 8 months. Forfeiture for the entire amount of the bond shall occur if payment is not received from the Cooperator by the due date.

It is necessary to publish these regulations as a final rule, to become effective immediately, in order to allow the importers of cattle to (1) secure the necessary financing; (2) enter into a cooperative agreement with the Department; and (3) make the necessary arrangements for the required pre-entry quarantine procedures. This is necessary in order to insure that the space available in HSTAIC is as fully utilized as possible.

Therefore, for such good cause the Department finds that notice and other public procedure regarding these amendments are impracticable and contrary to the public interest and good cause is found for making these amendments effective less than 30 days after publication in the Federal Register.

NOTE.—This final rulemaking is being published under emergency procedures as authorized by E.O. 12044, and Secretary's Memorandum No. 1955. It has been determined by Dr. G. V. Peacock, Director, National Program Planning Staffs, Veterinary Services, Animal and Plant Health Inspection Service, that the emergency nature of this rule, as indicated above, warrants the publication of this rule without waiting for public comment. This amendment, as well as the complete regulation, will be scheduled for review under provisions of E.O. 12044 and Secretary's Memorandum No. 1955. An Impact Analysis Statement has been prepared and is available from Program Services Staff, Room 870, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8695.

Done at Washington, D.C., this 5th day of March 1979.

PIERRE A. CHALOUX,
*Deputy Administrator,*
*Veterinary Services.*

[FR Doc. 79-7222 Filed 3-8-79; 8:45 am]

[6450-01-M]

Title 10—Energy

CHAPTER II—ECONOMIC REGULATORY ADMINISTRATION, DEPARTMENT OF ENERGY

PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS

**Standby Petroleum Product Allocation Regulations—Activation Order To Update the Motor Gasoline Allocation Base Period; Change of Hearing Dates and Location; Standby Regulation Activation Order No. 1**

AGENCY: Economic Regulatory Administration.

ACTION: Notice of Change of Hearing Dates and Location.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a change in the date and location for the public hearing on its activation order to update the motor gasoline base period previously set forth in the notice of the activation order issued on February 22, 1979 (44 FR 11202, February 28, 1979). The change is being made to allow ERA to receive public comments as quickly as possible to resolve many of the issues raised since issuance of the activation order.

DATES: The hearing in Washington, D.C., previously scheduled for March 27, 1979, is now scheduled for March 21, 1979, 9:30 a.m., and will be continued, if necessary, at 9:30 a.m. on March 22 and March 23. Written comments to be submitted by 4:30 p.m., e.s.t., March 30, 1979, to: Public Hearing Management, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461. Requests to speak must be made by March 16, 1979. If your are selected to be heard, you will be so notified before 4:30 p.m., e.s.t., March 19, 1979, and will be required to submit one hundred copies of your statement to: Public Hearing Management, Standby Activation Order No. 1, Economic Regulatory Administration, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461, before 4:30 p.m., e.s.t., March 19, 1979.

HEARING LOCATION: The hearing location is changed from Room 2105, 2000 M Street, N.W., Washington, D.C. to Room 3000A, Federal Building, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Robert G. Gillette (Comment Procedures), Economic Regulatory Administration, 2000 M Street, N.W., Room 2214B, Washington, D.C. 20461 (202) 254-5201.

William Webb (Office of Public Information), Economic Regulatory Administration, 2000 M Street, N.W., Room B-110, Washington, D.C. 20461 (202) 634-2170.

Gerald P. Emmer (Regulations and Emergency Planning), Economic Regulatory Administration, 2000 M Street, N.W., Room 2304, Washington, D.C. 20461 (202) 254-7200.

Michael Paige or Joel M. Yudson (Office of General Counsel), Department of Energy, 1000 Independence Avenue, S.W., Room 6A-127, Washington, D.C. 20585 (202) 252-6739.

Issued in Washington, D.C., March 6, 1979.

DOUGLAS G. ROBINSON,
*Assistant Administrator, Regulations and Emergency Planning, Economic Regulatory Administration.*

[FR Doc. 79-7233 Filed 3-7-79; 8:45 am]

[6210-01-M]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. O; Docket No. R-0194]

PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS

**Rules to Implement New Law**

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final regulation.

SUMMARY: The Board of Governors of the Federal Reserve System has amended its Regulation O (12 CFR Part 215), formerly entitled "Loans to Executive Officers of Member Banks." Amended Regulation O implements new section 22(h) of the Federal Reserve Act, recently enacted by Congress as section 104 of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 ("FIRA") (Pub. L. 95-630). The requirements of section 22(h) relate to loans by a member bank (1) to an executive officer, director or principal shareholder of the member bank or of any of its bank holding company affiliates or (2) to a company or political or campaign committee controlled by any of these persons.

The amendments to the regulation were adopted after review of the extensive public comment on the proposals. The amendments will become effective on March 10, 1979, to meet the effective date of section 22(h). However, the Board has invited additional public comment on the final rules for a further 60 day period. The Board will consider comments and adopt any appropriate amendments to the regulation as soon as practicable.

DATES: The regulation is effective March 10, 1979. Comments must be received by May 9, 1979.

ADDRESS: Comments should be in writing and should refer to Docket No. R-0194. They should be sent to Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The comments will be made available for inspection and copying as provided in the Board's Rules Regarding Availability of Information (12 CFR Part 261).

FOR FURTHER INFORMATION CONTACT:

James V. Mattingly or Michael E. Bleier, Senior Attorneys, Legal Division (202-452-3430 or 3721), or Mary Curtin, Senior Attorney, Division of Banking Supervision and Regulation (202-452-2620), Board of Governors of the Federal Reserve System.

SUPPLEMENTARY INFORMATION: On December 28, 1978, the Board of Governors of the Federal Reserve System proposed amendments to its Regulation O to implement the requirements of new section 22(h) of the Federal Reserve Act (44 FR 893, January 3, 1979). Section 22(h) governs loans by a member bank to any of its executive officers, directors or principal shareholders and to their related interests. An executive officer, director or principal shareholder of the member bank is defined to include any person that has the same relationship with (1) a bank holding company of which the member bank is a subsidiary or (2) any other subsidiary of that bank holding company.[1] A principal shareholder means an individual or company that controls more than 10 per cent [2] of any class of voting shares of the bank or company. (Shares held by a member of an individual's immediate family are considered held by the individual in determining principal shareholder status). The limitations of section 22(h) (except for the overdraft prohibition) also apply to a related interest of any of these persons. A related interest is a company that is controlled by, or a political or campaign committee that is controlled by or that benefits, a person.

Section 22(h) has four limitations. The statue generally:

(1) Establishes a lending limit of 10 percent of a member bank's capital and surplus (subject to certain exceptions) [3] for the aggregate amount of all loans by the bank to: (a) Each of its executive officers and the officer's related interests, (b) each of its principal shareholders and the shareholder's related interests, or (c) the related interests of each of the bank's executive officers and principal shareholders; [4]

(2) Prohibits the payment by a member bank of an overdraft of an executive officer or director on an account at the bank; [5]

(3) Requires that every extension of credit by a member bank to any of its executive officers, directors or principal shareholders or to any related interest of such a person (a) be made on substantially the same terms as those prevailing at the time for comparable transactions with other persons and (b) not involve more than the normal risk of repayment or present other unfavorable features; and

(4) Requires that every extension of credit by a member bank to any of its executive officers, directors or principal shareholders, or to any related interest of such a person, that would exceed $25,000, when all loans to the person and the person's related interests are aggregated, be approved in advance by a majority of the entire board of directors of the bank, with the interested party abstaining from voting.

The Board has received well over 200 written comments concerning the proposed regulation and has modified the regulation after considering the concerns expressed by the comments. The Board and the Comptroller of the Currency are aware of the complexities of the new statute and the brief period of time between publication of amended Regulation O and the effective date of the statute. The agencies will consider these factors in connection with any enforcement action for a violation occurring during the first 60 days that the regulation is in effect. The agencies have adopted this policy in recognition of the fact that some may inadvertently violate the regulation before they have developed procedures for compliance with it.

## Discussion of Issues

1. *Prior approval by the board of directors.* Most of the comments received were directed to the statute's requirement that a majority of the entire board [6] of directors of the member bank approve in advance loans by the member bank aggregating over $25,000 to any of its executive officers, directors or principal shareholders ("bank officials") or the related interests of these persons. The comments advised that the prior approval requirement was unnecessarily harsh and would tend to discourage qualified persons from serving as bank directors due to delays they could face in obtaining credit.

After considering these comments, the Board has amended the regulation to clarify that once a line of credit has been approved by a majority of the bank's entire board of directors, drawdowns on that line of credit do not require further approval by the board of directors if two conditions are met. The regulation requires (1) that the line of credit have been approved within 14 months of the date of the drawdown; and (2) that the terms of the drawdown comply with the statute's prohibition against preferential lending and not involve more than the normal risk of repayment or present other unfavorable features. This modification is consistent with both the letter and spirit of section 22(h).

2. *Overdrafts.* About 65 of the comments received by the Board suggested that provision be made in the regulation for inadvertent overdrafts. The regulation and the statute provide exceptions from the prohibition against payment of an overdraft when the overdraft is paid pursuant to: (1) A written, preauthorized interest-bearing loan plan that specifies a method of repayment, or (2) a written, preauthorized transfer of funds from another account of the account holder at the bank. In addition, the Board has modified the regulation to allow the payment of an inadvertent overdraft of a limited amount that will be

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[1] In certain circumstances, as discussed below, executive officers of other subsidiaries of the member bank's parent bank holding company are not considered to be executive officers of the member bank.

[2] If the member bank is located in a city, town or village with a population of less than 30,000, this figure is 18 percent for the purpose of the 10 percent lending limit established by section 22(h). If such a member bank is a subsidiary of a bank holding company, a person will not be a principal shareholder of the bank holding company unless the person controls more than 18 percent of any class of voting securities of the bank holding company.

[3] These exceptions are set forth in section 5200 of the Revised Statutes, 12 U.S.C. 84. The exceptions generally provide higher or no limits for certain types of secured obligations. For example, obligations fully secured by direct obligations of, or fully guaranteed as to principal and interest by, the United States are not subject to any limitation under section 5200 of the Revised Statutes. 12 CFR 7.1560. A copy of that statute has been included as an appendix to the regulation. See also 12 CFR Part 7, Subpart A, for a discussion of these exceptions.

[4] The 10 percent lending limit does not apply to member bank loans to a director of (a) the member bank, (b) the member bank's parent bank holding company, or (c) any other subsidiary of the parent bank holding company, unless the director is also an executive officer or principal shareholder.

[5] The prohibition against payment by a member bank of an overdraft does not apply to an overdraft of a principal shareholder of (a) the member bank, (b) its parent bank holding company, or (c) any other subsidiary of the parent bank holding company, unless the principal shareholder is also an executive officer or director. The overdraft prohibition also does not apply to related interests.

[6] The 10 percent lending limit does not apply to member bank loans to a director of (a) the member bank, (b) the member bank's parent bank holding company, or (c) any other subsidiary of the parent bank holding company, unless the director is also an executive officer or principal shareholder.

promptly repaid. The regulation requires the member bank to charge the director or officer the same fee charged any other customer of the bank in similar circumstances. The Board intends that this provision be used solely in the unusual case of an inadvertent overdraft. This amendment is consistent with the Board's previous definition of extension of credit in Regulation O, with the statutory exception for interest-bearing overdraft plans, and with the purpose of section 22(h) to prevent self-dealing by bank officials.

3. *Lending limit.* A number of comments raised the question whether the 10 per cent lending limit of section 22(h) applies to a loan by a member bank to its parent bank holding company or a nonbank subsidiary of that holding company.[6] Currently, loans by a member bank to its parent bank holding company and to all other subsidiaries of that holding company (including subsidiary banks) are subject, in the aggregate, to a lending limit of 20 per cent of the member bank's capital and surplus under section 23A of the Federal Reserve Act (12 U.S.C. 371c). Under section 23A, a member bank's parent bank holding company and any other subsidiary of that holding company would be considered an affiliate of the member bank.

To subject loans within a bank holding company system to the aggregate lending limit of section 22(h) would, in many situations, result in an amendment of the 20 per cent lending limit of section 23A. The Board finds no evidence of any Congressional intent to effect such an amendment or significant modification of section 23A. Indeed, a Congressional intent that the two statutes be interpreted consistently is evident from the requirement in section 22(h) that the term extension of credit shall have the same meaning as in section 23A. Accordingly, the regulation excludes from the lending limit of section 22(h) an extension of credit by a member bank to its parent bank holding company or to any other subsidiary of that bank holding company. The exclusion applies also to a foreign bank that controls a domestic bank and to the other subsidiaries of the foreign bank.

However, a member bank's loans to its parent bank holding company and to nonbank subsidiaries of that holding company remain subject to the prior approval and preferential lending restrictions of section 22(h). In addition, a member bank's loans to a principal shareholder or executive officer of the member bank's parent bank holding company or of any other subsidiary of that bank holding company and to all related interests of these persons are subject to the 10 per cent lending limit (and other applicable restrictions) of section 22(h).

The Board has also excluded from coverage as a member bank under section 22(h) a foreign bank that maintains a branch in the United States, whether or not the branch is insured. Under the International Banking Act of 1978 (Pub. L. 95-369), a foreign bank that has an insured branch is treated as a nonmember insured bank (12 U.S.C. 1813(h)). Without the exclusion, the foreign bank would be subject to the provisions of section 22(h), which are made applicable to nonmember insured banks as if they were member banks (12 U.S.C. 1828(j)(2)). This exclusion is consistent with the exemption from section 23A granted to such foreign banks under the International Banking Act (12 U.S.C. 1828(j)(1)) and with the requirement of that statute (12 U.S.C. 3105(d)) that the Board submit to the Congressional banking committees within two years a recommendation regarding limitations that should be placed on foreign banks regarding loans to their affiliates. It should be noted that the Board maintains residual supervisory authority over all U.S. operations of foreign banks.

4. *Preferential Lending.* Under the statute, a member bank's loans to bank officials and their related interests must be made on "substantially the same terms" as "comparable transactions with other persons." The proposed regulation issued for comment reflected the Board's view that "other persons" meant persons not associated with the bank. A number of the comments (mainly from State nonmember banks) inquired whether, under the proposed Regulation O issued for comment, executive officers may obtain preferential interest rates under bank employee benefit plans. The issue has arisen because State nonmember banks are not subject to the prohibition of section 22(g) of the Federal Reserve Act against lending by a member bank to its executive officers at preferential rates.[7]

The Board has decided that the preferential lending rules should be uniform for all insured banks. Since the Board finds little basis to change its long-held view that preferential lending by a member bank to its executive officers is not permitted by section 22(g) or to conclude that new section 22(h) should be interpreted to allow preferential lending, the Board has rejected the requested change. The Board believes the Congress has indicated a desire to prohibit preferential lending by insured banks to their executive officers, directors, or principal shareholders. Indeed, in Title VIII of FIRA, Congress has prohibited such preferential lending by banks that maintain a correspondent account relationship to each other's executive officers, directors, or principal shareholders.

5. *Executive officer.* The Board has continued in Regulation O its previous defintion of executive officer as one who participates or is authorized to participate (other than in the capacity of a director) in major policymaking functions of a bank or company. Under section 22(h), an "officer" of a bank holding company of which a member bank is a subsidiary and an "officer" of any other subsidiary of that holding company is deemed to be an "officer" of the member bank. While officers of a member bank's holding company affiliates are thus considered officers of the member bank for purposes of section 22(h), the statute's prohibitions run only to "executive officers".

Amended Regulation O makes it clear that the limitations of section 22(h) regarding member bank loans to its executive officers also apply to all executive officers of a bank holding company of which the member bank is a subsidiary. The regulation also includes, as executive officers of the member bank, all executive officers of all other subsidiaries of the member bank's parent bank holding company unless: (1) The executive officer is excluded (by name or by title) from participation in major policymaking functions of the member bank by resolutions of the boards of directors of *both* the member bank and the other subsidiary, and (2) the executive officer does not actually participate in major policymaking functions of the member bank.

6. *Definition of Subsidiary.* A number of the comments have raised the question whether a subsidiary of a member bank would be considered to be an "other subsidiary" of the member bank's parent bank holding company. If so, member bank loans to its *own* subsidiaries would be subject to the lending restrictions of section 22(h). As noted in paragraph 3 above, the Board has excluded member bank loans to its bank holding company affiliates from the 10 per cent limitation of section 22(h).

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[6] Because insured banks are excluded from the definition of "company" in section 22(h), loans by a member bank to any of its insured bank affiliates are not subject to the restrictions of section 22(h) (including the 10 per cent lending limit).

[7] Under Regulation O, the Board has allowed executive officers of member banks to participate in bank credit card, check credit and similar open end credit plans as long as the terms of such indebtedness were not more favorable than those offered to the general public. The Board has also required other indebtedness of executive officers to a member bank to be on terms no more favorable than those available to persons not associated with the bank. See footnote 8, below.

Section 22(h) applies to loans by a member bank to its principal shareholders and to a company "controlled" by a principal shareholder. There does not appear to be any Congressional intent to cover credit transactions between a member bank and its own subsidiaries. In addition, the Board has long held that a credit transaction by a member bank with an operations subsidiary of the bank is not an extension of credit of the kind intended to be restricted by section 23A. (12 CFR 250.240). The Board reasoned that the subsidiary is in effect part of its parent bank just as though it were a department of the bank. For these reasons and consistent with section 23A, the Board has revised Regulation O to clarify that member bank loans to its own subsidiaries are not subject to the limitations of section 22(h) (including the prior approval and preferential lending requirements) and that executive officers, directors and principal shareholders of such subsidiaries will not be deemed to have that same relationship with the parent member bank. To accomplish this, § 215.2(l) of the regulation specifies that the term "subsidiary" does not include a subsidiary of a member bank.

However, if an officer, director or principal shareholder of a subsidiary of a member bank participates, or has authority to participate, in major policymaking functions of the member bank, that individual is considered to be an executive officer of the member bank under the definition of executive officer in amended Regulation O, whether or not the person holds any official position with the member bank. Such a person and all his related interests would then be subject to all the restrictions of section 22(h). The Board's rules concerning member bank lending with respect to its own subsidiaries have been adopted on the basis of the Board's experience in the supervision of such relationships and in the light of the purposes of the Act.

7. *Control of a bank or company.* A number of comments questioned whether an individual would, by reason of a position as an executive officer or director of a bank or company, be considered to control the bank or company or to exercise a controlling influence over its management or policies. The Board has amended the regulation to clarify that an individual will not be presumed to control a company or a bank *solely* because of the individual's position as a director or executive officer of the company or bank. The regulation also establishes rebuttable presumptions of control in the following two situations:

1. Where an *executive officer* or *director* controls more than 10 per cent of the shares of the bank or company; or

2. Where *any person* owns more than 10 per cent of the shares of a bank or company and no other person owns or controls a greater percentage of the institution's shares.

Provision has been made in the regulation for a person to rebut these presumptions.

8. *Immediate family.* Under the regulation, shares owned or controlled by a member of an individual's immediate family are considered to be owned or controlled by the individual for the purpose of determining whether the individual is a principal shareholder. The Board has limited the definition of immediate family to an individual's spouse, minor children, and the individual's children (including adults) living in the same household.

9. *Time to bring outstanding loans into compliance with the lending limit.* The proposed regulation issued for comment provided two different schedules for bringing loans outstanding on the effective date of section 22(h) (March 10, 1979) into compliance with the 10 per cent lending limit. The Board proposed one schedule for loans made before November 10, 1978 (the date section 22(h) was enacted), and another schedule for loans made between November 10, 1978, and March 10, 1979.

Many of the comments stated that these periods were too short (especially in the case of State banks not before subject to the general 10 per cent limit of section 5200 of the Revised Statutes) and that the effect of the compliance deadlines would be particularly harsh in the case of term loans, such as residential mortgage loans, that are payable on a fixed schedule.

The Board has revised the proposed regulation to allow term loans with fixed maturities (including residential mortgage loans) that were made before March 10, 1979, to be repaid in accordance with their existing payment schedules. Other loans (typically demand loans) are required to be reduced in amount to comply with the lending limit by March 10, 1980 (with two one-year extensions available for good cause).

The Board has also revised the proposed regulation to eliminate the separate compliance schedule for loans made between the enactment date and effective date of section 22(h)—that is, between November 10, 1978, and March 10, 1979. Loans made during this interim period (except for term loans with fixed maturities) must now be brought into compliance within the same time period as loans made before November 10, 1978, that is, by March 10, 1980. The Board expects that no extensions of time beyond March 10, 1980, to bring these loans into compliance will be granted.

The appropriate Federal banking agency will examine term loans made during this interim period closely, particularly those made between February 28, 1979 (the date of the Board meeting at which amended Regulation O was adopted), and March 10, 1979, to determine if they were made to avoid the lending limit or preferential lending restrictions of the statute. If so, these loans may be subject to supervisory action by the appropriate banking agency or to further regulatory action.

The prohibitions of section 22(h) against preferential lending are prospective. Preferential loans that are outstanding on March 10, 1979, are not specifically addressed in the statute or Regulation O. However, member banks should eliminate the preferential terms on such loans as soon as practicable. If such terms are not eliminated, they may be subject to criticism. This policy applies particularly to demand loans that are within the power of the bank to call and renegotiate at any time.

Finally, consideration is being given to requiring that an extension of credit by a member bank to a person that subsequently becomes a bank official or to a related interest of such a person be brought into compliance with the lending limit and preferential lending restrictions of §§ 215.4(a) and 215.4(c) within 2 years of the date the person becomes covered by the regulation. This 2 year time period would be subject to extension by the appropriate Federal banking agency for good cause. Such a requirement may be necessary to prevent evasions of section 22(h). Public comment is requested specifically on this possible amendment.

10. *Capital and Surplus.* As indicated, the lending limit of section 22(h) is based on the member bank's capital stock and unimpaired surplus. In its original notice, the Board requested comment on whether subordinated notes and debentures should be included as capital and surplus for the purposes of this lending limit.

The comments were virtually unanimous in urging the agencies to adopt a common definition of capital to avoid any inequality that might result between national and State banks. The comments were also virtually unanimous in urging that subordinated notes and debentures be included as capital. The regulation now defines a member bank's capital stock and surplus to be an amount equal to the sum of (1) the "total equity capital" of the member bank as reported in its most recent consolidated report of condition, (2) subordinated notes and debentures that have been approved as an addition to the bank's capital structure by the appropriate Federal bank-

ing agency, and (3) valuation reserves created by charges to the member bank's income.

The Board's inclusion of subordinated notes and debentures in the definition of capital and surplus is solely for the purposes of the lending limit established by section 22(h) and should not be construed as reflecting any position of the Board on whether subordinated notes and debentures should be considered part of a member bank's capital or surplus for other purposes.

11. *Section 22(g) of the Federal Reserve Act.* Under the Board's proposed regulation, the lending limit of section 22(h) would not have applied to prevent an extension of credit authorized under section 22(g) of the Federal Reserve Act (which governs member bank loans to its executive officers).[8] The Board received little favorable comment on the proposal. The proposed provision would not have been available to national banks, because they are in any event subject to a 10 per cent limit under section 5200 of the Revised Statutes.

The Board proposed the rule as a means to lessen the impact of section 22(h) and the proposed compliance deadlines with respect to home mortgage loans made before March 10, 1979, by State banks to their executive officers. As originally proposed, such loans would have been required to be reduced by March 10, 1980, to comply with the 10 per cent lending limit. Since the regulation now exempts home mortgage loans made before March 10, 1979, from the compliance deadline of March 10, 1980, and such mortgage loans may be reduced in accordance with their original repayment schedules, the proposed exclusion is no longer necessary. Therefore, a loan by a member bank to any of its executive officers must comply with the requirements of both sections 22(g) and 22(h).

The Board has also decided to retain in amended Regulation O a recitation of the lending limitations and reporting requirements of former Regulation O, which implemented section 22(g). However, the regulation shortens and simplifies the language of former Regulation O with respect to these provisions.

Unlike the requirements of section 22(h), which are applicable to member bank loans to executive officers of the member bank as well as to executive officers of the member bank's parent bank holding company and other subsidiaries of that bank holding company, section 22(g) is applicable only to member bank loans to its *own* executive officers. A great many State nonmember insured banks questioned whether FIRA had caused section 22(g) to apply to nonmember insured banks. The answer is that section 22(g) is not applicable, and has not been made applicable by FIRA, to nonmember insured banks. Section 22(g) is applicable only to member banks and their loans to their *own* executive officers. The lending restrictions and reporting requirements of section 22(g) are now contained in §§ 215.5, 215.8, and 215.9 of amended Regulation O.

12. *Extension of Credit.* The regulation defines an extension of credit as a making or renewal of any loan, the granting of a line of credit, or an extending of credit in any manner whatsoever. The regulation specifically includes a purchase of securities under repurchase agreement, the issuance of a standby letter of credit, and an endorsement or guarantee.[9] The regulation excludes certain indebtedness necessary to protect the bank against loss and bank credit card plans and other types of open end credit in an amount not to exceed $5,000 if the credit is on terms not more favorable than those offered to the general public. It should be noted that the provisions of section 22(h) do not apply to credit transactions between insured bank affiliates since an insured bank is excluded from the definition of company in section 22(h) (see footnote 6, above).

As indicated above, the term extension of credit in section 22(h) has the same meaning as in section 23A. The Board intends to interpret the term extension of credit for the purposes of section 22(h) consistently with its interpretations of section 23A.

The Board has also modified the definition of extension of credit to clarify that when a bank official or a related interest receives the proceeds or tangible economic benefit of an extension of credit, the extension of credit will be considered made to that person for purposes of section 22(h). This provision is consistent with a similar provision in section 23A and is designed to prevent evasion of the statute through the use of nominee borrowers. When a lending bank does not know, and has no reason to know, that the proceeds of the extension of credit are used for the benefit of, or transferred to, a bank official or a related interest of that person, the lending bank is not in violation of the provisions of Regulation O. The persons involved in the nominee scheme may, of course, be in violation of the regulation. The regulation also makes clear that a participation with out recourse is considered to be an extension of credit by the participating bank, but not by the originating bank.

13. *Advisory Director.* The board has excluded advisory directors from coverage under the statute if they provide *solely* general policy advice to the board of directors and do not vote.

14. *Miscellaneous.* The Board has drafted these rules to effect the purposes of section 22(h) in the area of loans by a member bank to bank officials and their related interests. The Board will review the regulation periodically and adopt any modifications to the regulation that are shown by experience to be necessary or appropriate to carry out the intent of the Congress in this area or to prevent evasions of the statute.

The expanded procedures set forth in the Board's policy statement of January 15, 1979 (44 FR 3957), were not strictly followed in developing this regulation, since it was proposed for comment before the policy statement was adopted. In addition, a delay in promulgating the regulation is inappropriate in light of the necessity to meet the statute's effective date of March 10, 1979, and the necessity for providing immediate guidance to persons affected by section 22(h). In the development of this final regulation, the Board has, however, complied with the spirit and intent of its policy statement by making every effort to reduce unnecessary regulatory burdens with due regard for the purposes of the statute.

The modifications to the regulation were made after full consideration of the extensive public comments submitted to the Board. In furtherance of the Board's policy to encourage full public participation in its rulemaking proceedings and in response to specific requests and comments, the Board invites further public comment on the rules for a further 60 days. The Board will consider comments and adopt any further amendments to the regulation that the Board finds are necessary or appropriate. The Board will make any changes as soon as practicable after the comment period.

The Board finds that publication of the amended Regulation O for the full 30 day period specified in 5 U.S.C. 553(d) would not be in the public interest because the statute takes effect on March 10, 1979.

Accordingly, the Board of Governors of the Federal Reserve System amends its Regulation O (12 CFR Part 215) to read as set forth below:

[8] Section 22(g) of the Federal Reserve Act limits member bank loans to each of its executive officers to $30,000 for home mortgage credit, $10,000 to educate the executive officer's children, and $5,000 for other purposes. Effective March 10, 1979, section 110 of Title I of FIRA doubles these amounts.

[9] To avoid double counting of extensions of credit to a bank official and the related interests of the bank official, an endorsement or guarantee by a bank official of an extension of credit to a related interest of the bank official (or vice-versa) will be considered a single extension of credit in the amount of the direct obligation of the related interest for the purposes of the 10 per cent lending limit of section 22(h).

# PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS

Sec.
215.1 Authority, purpose, and scope.
215.2 Definitions.
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215.6 Exentions of Credit Outstanding on March 10, 1979.
215.7 Records of Member Banks.
215.8 Reports by Executive Officers.
215.9 Reports by Member Banks.
215.10 Civil Penalties.

AUTHORITY: Secs. 11(i), 22(g) and 22(h), Federal Reserve Act (12 U.S.C. 248(i), 375a and 375b(7)).

## § 215.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to sections 11(i), 22(g), and 22(h) of the Federal Reserve Act (12 U.S.C. 248(i), 375a, and 375b(7)).

(b) *Purpose and Scope.* This part governs any extension of credit by a member bank to an executive officer, director, or principal shareholder of (1) the member bank, (2) a bank holding company of which the member bank is a subsidiary, and (3) any other subsidiary of that bank holding company. It also applies to any extension of credit by a member bank to (i) a company controlled by such a person and (ii) a political or campaign committee that benefits or is controlled by such a person.

## § 215.2 Definitions.

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

(a) "Company" means any corporation, partnership, trust (business or otherwise), association, joint venture, pool syndicate, sole proprietorship, unincorporated organization, or any other form of business entity not specifically listed herein. However, the term does not include (1) an insured bank (as defined in 12 U.S.C. 1813(h)) or (2) a corporation the majority of the shares of which are owned by the United States or by any State.

(b)(1) "Control of a company or bank" means that a person directly or indirectly, or acting through or in concert with one or more persons:

(i) Owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the company or bank;

(ii) Controls in any manner the election of a majority of the directors of the company or bank; or

(iii) Has the power to exercise a controlling influence over the management or policies of the company or bank.

(2) A person is presumed to have control, including the power to exercise a controlling influence over the management or policies, of a company or bank if:

(i) The person is (A) an executive officer or director of the company or bank and (B) directly or indirectly owns, controls, or has the power to vote more than 10 percent of any class of voting securities of the company or bank; or

(ii) (A) The person directly or indirectly owns, controls, or has the power to vote more than 10 percent of any class of voting securities of the company or bank, and (B) no other person owns, controls, or has the power to vote a greater percentage of that class of voting securities.

(3) An individual is not considered to have control, including the power to exercise a controlling influence over the management or policies, of a company or bank solely by virtue of the individual's position as an officer or director of the company or bank.

(4) A person may rebut a presumption established by paragraph (b)(2) of this section by submitting to the appropriate Federal banking agency (as defined in 12 U.S.C. 1813(q)) written materials that, in the agency's judgment, demonstrate an absence of control.

(c) "Director of a member bank" includes (1) any director of a member bank, whether or not receiving compensation, (2) any director of a bank holding company (as defined in 12 U.S.C. 1841(a)) of which the member bank is a subsidiary, and (3) any director of any other subsidiary of that bank holding company. An advisory director is not considered a director if the advisory director (1) is not elected by the shareholders of the company or bank, (2) is not authorized to vote on matters before the board of directors, and (3) provides solely general policy advice to the board of directors.

(d) "Executive officer" of a company or bank means a person who participates or has authority to participate (other than in the capacity of a director) in major policymaking functions of the company or bank, whether or not: (1) The officer has an official title, (2) the title designates the officer an assistant, or (3) the officer is serving without salary or other compensation.[1] The chairman of the board, the president, every vice president, the cashier, the secretary, and the treasurer of a company or bank are considered executive officers, unless (1) the officer is excluded, by resolution of the board of directors or by the bylaws of the bank or company, from participation (other than in the capacity of a director) in major policymaking functions of the bank or company, and (2) the officer does not actually participate therein. For the purpose of §§ 215.4 and 215.7 below, an executive officer of a member bank includes an executive officer of (1) a bank holding company (as defined in 12 U.S.C. 1841(a)) of which the member bank is a subsidiary and (2) any other subsidiary of that bank holding company unless the executive officer of the subsidiary (i) is excluded (by name or by title) from participation in major policymaking functions of the member bank by resolutions of the boards of directors of both the subsidiary and the member bank, and (ii) does not actually participate in such major policymaking functions.

(e) "Immediate family" means the spouse of an individual, the individual's minor children, and any of the individual's children (including adults) residing in the individual's home.

(f) The "lending limit" for a member bank is an amount equal to the limit on loans to a single borrower established by section 5200 of the Revised Statutes, 12 U.S.C. 84. This amount is 10 percent of the bank's capital stock and unimpaired surplus or any higher amount permitted by section 5200 of the Revised Statutes for the types of obligations listed therein as exceptions to the 10 percent limit. A member bank's capital stock and unimpaired surplus equals the sum of (1) the "total equity capital" of the member bank reported on its most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3), (2) any subordinated notes and debentures approved as an addition to the member bank's capital structure by the appropriate Federal banking agency, and (3) any valuation reserves created by charges to the member bank's income.

(g) "Member bank" means any banking institution that is a member of the Federal Reserve System. The term does not include any foreign bank (as defined in 12 U.S.C. 3101(b)(7)) that maintains a branch in the United States, whether or not the branch is insured (within the meaning of 12 U.S.C. 1813(s)) and regardless of the operation of 12 U.S.C. 1813(h) and 12 U.S.C. 1828(j)(2).

(h) "Pay an overdraft on an account" means to pay an amount upon the order of an account holder in

[1] The term is not intended to include persons who may have official titles and may exercise a certain measure of discretion in the performance of their duties, including discretion in the making of loans, but who do not participate in the determination of major policies of the bank or company and whose decisions are limited by policy standards fixed by the senior management of the bank or company. For example, the term does not include a manager or assistant manager of a branch of a bank unless that individual participates, or is authorized to participate, in major policymaking functions of the bank or company.

excess of funds on deposit in the account.

(j) "Person" means an individual or a company.

(l) "Principal shareholder" means an individual or a company (other than an insured bank) that directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 percent of any class of voting securities of a member bank or company. However, for the purposes of § 215.4(c) below, this percentage shall be "more than 18 percent" if the member bank is located in a city, town, or village with a population of less than 30,000. Shares owned or controlled by a member of an individual's immediate family are considered to be held by the individual. A principal shareholder of a member bank includes (1) a principal shareholder of a bank holding company (as defined in 12 U.S.C. 1841(a)) of which the member bank is a subsidiary and (2) a principal shareholder of any other other subsidiary of that bank holding company.

(k) "Related interest" means (1) a company that is controlled by a person or (2) a political or campaign committee that is controlled by a person or the funds or services of which will benefit a person.

(i) "Subsidiary" has the meaning given in 12 U.S.C. 1841(d), but does not include a subsidiary of a member bank.

§ 215.3 Extension of credit.

(a) An extension of credit is a making or renewal of any loan, a granting of a line of credit, or an extending of credit in any manner whatsoever, and includes:

(1) A purchase under repurchase agreement of securities, other assets, or obligations;

(2) An advance by means of an overdraft, cash item, or otherwise;

(3) Issuance of a standby letter of credit (or other similar arragement regardless of name or description) or an ineligible acceptance, as those terms are defined in § 208.8(d) of this chapter;

(4) An acquistion by discount, purchase, exchange, or otherwise of any note, draft, bill of exchange, or other evidence of indebtedness upon which a person may be liable as maker, drawer, endorser, guarantor, or surety;

(5) A discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, whether with or without recourse; but the acquisition of such paper by a member bank from another bank, without recourse, shall not be considered a discount by the member bank for the other bank;

(6) An increase of an existing indebtedness, but not if the additional funds are advanced by the bank for its own protection for (i) accrued interest or (ii) taxes, insurance, or other expenses incidental to the existing indebtedness;

(7) An advance of unearned salary or other unearned compensation for a period in excess of 30 days; and

(8) Any other transaction as a result of which a person becomes obligated to pay money (or its equivalent) to a bank, whether the obligation arises directly or indirectly, or because of an endorsement on an obligation or otherwise, or by any means whatsoever.

(b) An extension of credit does not include:

(1) An advance against accrued salary or other accrued compensation, or an advance for the payment of authorized travel or other expenses incurred or to be incurred on behalf of the bank;

(2) A receipt by a bank of a check deposited in or delivered to the bank in the usual course of business unless it results in the carrying of a cash item for or the granting of an overdraft (other than an inadvertent overdraft in a limited amount that is promptly repaid, as described in § 215.4(d) below);

(3) An acquisition of a note, draft, bill of exchange, or other evidence of indebtedness through (i) a merger or consolidation of banks or a similar transaction by which a bank acquires assets and assumes liabilities of another bank or similar organization or (ii) foreclosure on collateral or similar proceeding for the protection of the bank: *Provided*, That such indebtedness is not held for a period of more than three years from the date of the acquisition, subject to extension by the appropriate Federal banking agency for good cause;

(4)(i) An endorsement or guarantee for the protection of a bank of any loan or other asset previously acquired by the bank in good faith or (ii) any indebtedness to a bank for the purpose of protecting the bank against loss or of giving financial assistance to it; or

(5) Indebtedness of $5,000 or less arising by reason of any general arrangement by which a bank (i) acquires charge or time credit accounts or (ii) makes payments to or on behalf of participants in a bank credit card plan, check credit plan, interest bearing overdraft credit plan of the type specified in § 215.4(d) below, or similar openend credit plan: *Provided:* (A) The indebtedness does not involve prior individual clearance or approval by the bank other than for the purposes of determining authority to participate in the arrangement and compliance with any dollar limit under the arrangement, and (B) the indebtedness is incurred under terms that are not more favorable than those offered to the general public.

(c) Non-interest-bearing deposits to the credit of a bank are not considered loans, advances, or extensions of credit to the bank of deposit; nor is the giving of immediate credit to a bank upon uncollected items received in the ordinary course of business considered to be a loan, advance or extension of credit to the depositing bank.

(d) For purposes of § 215.4(b) and (c) below, an extension of credit by a member bank is considered to have been made at the time the bank enters into a binding commitment to make the extension of credit.

(e) A participation without recourse is considered to be an extension of credit by the participating bank, not by the originating bank.

(f) An extension of credit is considered made to a person covered by this part to the extent that the proceeds of the extension of credit are used for the tangible economic benefit of, or are transferred to, such a person.

§ 215.4 General prohibitions.

(a) *Terms and Creditworthiness.* No member bank may extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of that person unless the extension of credit: (1) Is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions by the bank with other persons that are not covered by this Part and who are not employed by the bank, and (2) does not involve more than the normal risk of repayment or present other unfavorable features.

(b) *Prior Approval.* (1) No member bank may extend credit or grant a line of credit to any of its executive officers, directors or principal shareholders or to any related interest of that person in an amount that, when aggregated with the amount of all other extensions of credit and lines of credit by the member bank to that person and to all related interests of that person, exceeds $25,000, unless (i) the extension of credit or line of credit has been approved in advance by a majority of the entire board of directors of that bank and (ii) the interested party has abstained from participating directly or indirectly in the voting.

(2) Approval by the board of directors under paragraph (b)(1) of this section is not required for an extension of credit that is made pursuant to a line of credit that was approved under paragraph (b)(1) of this section within 14 months of the date of the extension of credit. The extension of credit must also be in compliance with the requirements of § 215.4(a) above.

(3) Participation in the discussion, or any attempt to influence the voting, by the board of directors regarding an extension of credit constitutes indirect participation in the voting by the board of directors on an extension of credit.

(c) *Aggregate Lending Limit.* No member bank may extend credit to any of its executive officers or principal shareholders or to any related interest of that person [2] in an amount that, when aggregated with the amount of all other extensions of credit by the member bank to that person and to all related interests of that person, exceeds the lending limit of the member bank specified in § 215.2(f) above. This prohibition does not apply to an extension of credit by a member bank to a bank holding company (as defined in 12 U.S.C. 1841(a)) of which the member bank is a subsidiary or to any other subsidiary of that bank holding company.

(d) *Overdrafts.* No member bank may pay an overdraft of an executive officer or director of the bank [3] on an account at the bank, unless the payment of funds is made in accordance with (1) a written, preauthorized, interest-bearing extension of credit plan that specifies a method of repayment or (2) a written, preauthorized transfer of funds from another account of the account holder at the bank. This prohibition does not apply to payment of inadvertent overdrafts on an account in an aggregate amount of $1,000 or less: *Provided,* (1) The account is not overdrawn for more than 5 business days, and (2) the member bank charges the executive officer or director the same fee charged any other customer of the bank in similar circumstances.

### § 215.5 Additional restrictions on loans to Executive Officers of Member Banks.

(a) No member bank may extend credit to any of its executive officers,[4] and no executive officer of a member bank shall borrow from or otherwise become indebted to the bank, except in the amounts, for the purposes, and upon the conditions specified in paragraphs (c) and (d) of this section.

(b) No member bank may extend credit in an aggregate amount greater than $10,000 outstanding at any one time to a partnership in which one or more of the executive officers of the member bank are partners and, either individually or together, hold a majority interest. For the purposes of paragraph (c)(3) of this section, the total amount of credit extended by a member bank to such partnership is considered to be extended to each executive officer of the member bank who is a member of the partnership.

(c) A member bank is authorized to extend credit to an executive officer of the bank in an aggregate amount not to exceed:

(1) $20,000 outstanding at any one time to finance the education of the executive officer's children;

(2) $80,000 outstanding at any one time to finance the purchase, construction, maintenance, or improvement of a residence of the executive officer, if the extension of credit is secured by a first lien on the residence and the residence is owned (or expected to be owned after the extension of credit) by the executive officer; and

(3) $10,000 outstanding at any one time for a purpose not otherwise specifically authorized under this paragraph.

(d) Any extension of credit by a member bank to any of its executive officers shall be: (1) Promptly reported to the member bank's board of directors; (2) in compliance with the requirements of § 215.4(a) above; (3) preceded by the submission of a detailed current financial statement of the executive officer; and (4) made subject to the condition that the extension of credit will, at the option of the member bank, become due and payable at any time that the officer is indebted to any other bank or banks in an aggregate amount greater than the amount specified for a category of credit in paragraph (c) of this section.

### § 215.6 Extensions of credit outstanding on March 10, 1979.

(a) Any extension of credit that was outstanding on March 10, 1979, and that would, if made on or after March 10, 1979, violate § 215.4(c) above, shall be reduced in amount by March 10, 1980, to be in compliance with the lending limit in § 215.4(c). Any renewal or extension of such an extension of credit on or after March 10, 1979, shall be made only on terms that will bring the extension of credit into compliance with the lending limit of § 215.4(c) by March 10, 1980. However, any extension of credit made before March 10, 1979, that bears a specific maturity date of March 10, 1980, or later, shall be repaid in accordance with its repayment schedule in existence on or before March 10, 1979.

(b) If a member bank is unable to bring all extensions of credit outstanding on March 10, 1979, into compliance as required by paragraph (a) of this section, the member bank shall promptly report that fact to the Comptroller of the Currency, in the case of a national bank, or to the appropriate Federal Reserve Bank, in the case of a State member bank, and explain the reasons why all the extensions of credit cannot be brought into compliance. The Comptroller or the Reserve Bank, as the case may be, is authorized, on the basis of good cause shown, to extend the March 10, 1980, date for compliance for any extension of credit for not more than two additional one-year periods.

### § 215.7 Records of Member Banks.

Each member bank shall maintain records necessary for compliance with the requirements of this part. These records shall (a) identify all executive officers, directors, and principal shareholders of the member bank and the related interests of these persons and (b) specify the amount and terms of each extension of credit by the member bank to these persons and to their related interests. Each member bank shall request at least annually that each executive officer, director, or principal shareholder of the member bank identify the related interests of that person.

### § 215.8 Reports by Executive Officers.

Each executive officer [5] of a member bank who becomes indebted to any other bank or banks in an aggregate amount greater than the amount specified for a category of credit in § 215.5(c) above, shall, within 10 days of the date the indebtedness reaches such a level, make a written report to the board of directors of the officer's bank. The report shall state the lender's name, the date and amount of each extension of credit, any security for it, and the purposes for which the proceeds have been or are to be used.

### § 215.9 Reports by Member Banks.

Each member bank shall include with (but not as part of) each report of condition (and copy thereof) filed pursuant to 12 U.S.C. 1817(a)(3) a report of all extensions of credit made by the member bank to its executive officers [6] since the date of the bank's previous report of condition.

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[2] This prohibition does not apply to member bank loans to a director of the member bank or to a related interest of the director, unless the director is also an executive officer or principal shareholder. See also the definition of principal shareholder in § 215.2(j) above, in the case of a member bank located in a city, town or village with a population of less than 30,000.

[3] This prohibition does not apply to the payment by a member bank of an overdraft of a principal shareholder of the member bank, unless the principal shareholder is also an executive officer or director. This prohibition also does not apply to the payment by a member bank of an overdraft of a related interest of an executive officer, director, or principal shareholder of the member bank.

[4] Sections 215.5, 215.8 and 215.9 of Regulation O implement section 22(g) of the Federal Reserve Act and do not apply to nonmember banks. For the purposes of these sections, 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 any other subsidiary of that bank holding company.

[5] See note 4 above.

[6] See note 4 above.

§ 263.10 Civil penalties.

As specified in section 29 of the Federal Reserve Act (12 U.S.C. 504), any member bank, or any officer, director, employee, agent, or other person participating in the conduct of the affairs of the bank, that violates any provision of this part is subject to a civil penalty of not more than $1,000 per day for each day during which the violation continues.

*Effective date:* March 10, 1979.

Board of Governors of the Federal Reserve System, March 5, 1979.

THEODORE E. ALLISON,
*Secretary of the Board.*

APPENDIX.—SECTION 5200 OF THE REVISED STATUTES

The total obligations to any national banking association of any person, copartnership, association, or corporation shall at no time exceed 10 per centum of the amount of the capital stock of such association actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund. The term "obligations" shall mean the direct liability of the maker or acceptor of paper discounting with or sold to such association and the liability of the indorser, drawer, or guarantor who obtains a loan from or discounts paper with or sells paper under his guaranty to such association and shall include in the case of obligations of a copartnership or association the obligations of the several members thereof and shall include in the case of obligations of a corporation all obligations of all subsidiaries thereof in which such corporation owns or controls a majority interest. Such limitation of 10 per centum shall be subject to the following exceptions:

(1) Obligations in the form of drafts or bills of exchange drawn in good faith against actually existing values shall not be subject under this section to any limitation based upon such capital and surplus.

(2) Obligations arising out of the discount of commercial or business paper actually owned by the person, copartnership, association, or corporation negotiating the same shall not be subject under this section to any limitation based upon such capital and surplus.

(3) Obligations drawn in good faith against actually existing values and secured by goods or commodities in process of shipment shall not be subject under this section to any limitation based upon such capital and surplus.

(4) Obligations as indorser or guarantor of notes, other than commercial or business paper excepted under (2) hereof, having a maturity of not more than six months, and owned by the person, corporation, association, or copartnership indorsing and negotiating the same, shall be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus.

(5) Obligations in the form of banker's acceptances of other banks of the kind described in sections 372 and 373 of this title shall not be subject under this section to any limitation based upon such capital and surplus.

(6) Obligations of any person, copartnership, association or corporation, in the form of notes or drafts secured by shipping documents, warehouse receipts, or other such documents transferring or securing title covering readily marketable nonperishable staples when such property is fully covered by insurance, if it is customary to insure such staples shall be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus when the market value of such staples securing such obligation is not at any time less than 115 per centum of the face amount of such obligation, and to an additional increase of limitation of 5 per centum of such capital and surplus in addition to such 25 per centum of such capital and surplus when the market value of such staples securing such additional obligation is not at any time less than 120 per centum of the face amount of such additional obligation, and to a further additional increase of limitation of 5 per centum of such capital and surplus in addition to such 30 per centum of such capital and surplus when the market value of such staples securing such additional obligation is not at any time less than 125 per centum of the face amount of such additional obligation, and to a further additional increase of limitation of 5 per centum of such capital and surplus when the market value of such staples securing such additional obligation is not at any time less than 130 per centum of the face amount of such additional obligation, and to a further additional increase of limitation of 5 per centum of such capital and surplus in addition to such 40 per centum of such capital and surplus when the market value of such staples securing such additional obligation is not at any time less than 135 per centum of the face amount of such additional obligation, and to a further additional increase of limitation of 5 per centum of such capital and surplus in addition to such 45 per centum of such capital and surplus when the market value of such staples securing such additional obligation is not at any time less than 140 per centum of the face amount of such additional obligation, but this exception shall not apply to obligations of any one person, copartnership, association, or corporation arising from the same transactions and/or secured by the identical staples for more than ten months. Obligations of any person, copartnership, association, or corporation in the form of notes or drafts secured by shipping documents, warehouse receipts, or other such documents transferring or securing title covering refrigerated or frozen readily marketable staples when such property is fully covered by insurance, shall be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus when the market value of such staples securing such obligation is not at any time less than 115 per centum of the face amount of such additional obligation but this exception shall not apply to obligations of any one person, copartnership, association, or corporation arising from the same transactions and/or secured by the identical staples for more than six months.

(7) Obligations of any person, copartnership, association, or corporation in the form of notes or drafts secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than 115 per centum of the face amount of the notes covered by such documents shall be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus. Obligations arising out of the discount by dealers in dairy cattle of paper given in payment for dairy cattle, which bear a full recourse endorsement or unconditional guarantee of the seller and are secured by the cattle being sold, shall be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus.

(8) Obligations of any person, copartnership, association, or corporation secured by not less than a like amount of bonds or notes of the United States issued since April 24, 1917, or certificates of indebtedness of the United States, treasury bills of the United States or obligations fully guaranteed both as to principal and interest by the United States, shall (except to the extent permitted by rules and regulations prescribed by the Comptroller of the Currency, with the approval of the Secretary of the Treasury) be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus.

(9) Obligations representing loans to any national banking association or to any banking institution organized under the laws of any State, or to any receiver, conservator, or superintendent of banks, or to any other agent, in charge of the business and property of any such association or banking institution, when such loans are approved by the Comptroller of the Currency, shall not be subject under this section to any limitation based upon such capital and surplus.

(10) Obligations shall not be subject under this section to any limitation based upon such capital and surplus to the extent that such obligations are secured or covered by guaranties of, or by commitments or agreements to take over or to purchase, made by any Federal reserve bank or by the United States or any department, bureau, board, commission, or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States: *Provided*, That such guaranties, agreements, or commitments are unconditional and must be performed by payment of cash or its equivalent within sixty days after demand. The Comptroller of the Currency is hereby authorized to define the terms herein used if and when he may deem it necessary.

(11) Obligations of a local public agency (as defined in section 1460(h) of Title 42) or of a public housing agency (as defined in the United States Housing Act of 1937, as amended), which have a maturity of not more than eighteen months shall not be subject under this section to any limitation, if such obligations are secured by an agreement between the obligor agency and the Secretary of Housing and Urban Development in which the agency agrees to borrow from the Secretary, and the Secretary agrees to lend to the agency, prior to the maturity of such obligations, monies in an amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay the principal of such obligations with interest to maturity, which monies under the terms of said agreement are required to be used for that purpose.

(12) Obligations insured by the Secretary of Agriculture pursuant to the Bankhead-Jones Farm Tenant Act, as amended, or the Act of August 28, 1937, as amended (relating to the conservation of water resources), or sections 1471-1485 of Title 42, shall be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus.

(13) Obligations as endorser or guarantor of negotiable or non-negotiable installment consumer paper which carriers a full recourse endorsement or unconditional guarantee by the person, copartnership, association, or corporation transferring the same, shall be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus: *Provided, however,* That if the bank's files or the knowledge of its officers of the financial condition of each maker of such obligations is reasonably adequate, and upon certification by an officer of the bank designated for that purpose by the board of directors of the bank, that the responsibility of each maker of such obligations has been evaluated and the bank is relying primarily upon each such maker for the payment of such obligations, the limitations of this section as to the obligations of each such maker shall be the sole applicable loan limitation: *Provided further,* That such certification shall be in writing and shall be retained as part of the records of such bank.

(14) Obligations of the Student Loan Marketing Association shall not be subject to any limitation based upon such capital and surplus.

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[6210-01-M]

[Reg. S, Docket No. R-0209]

## PART 219—BANK SERVICE ARRANGEMENTS

## PART 250—MISCELLANEOUS INTERPRETATIONS

### Rescission of Regulation S; Amendment of Interpretation Regulations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Revocation and amendment of interpretations.

SUMMARY: As part of its Regulatory Improvement Project, involving a substantive review of all Federal Reserve regulations, the Board has reviewed Regulation S, "Bank Service Arrangements" (12 CFR Part 219), which implements the Bank Service Corporation Act (12 U.S.C. 1861-65). That regulation specifies the manner of assuring the Board that the performance of bank services for State member banks will be subject to regulation and examination by the Board whenever the services are performed by anyone other than the bank itself. On the basis of its review and in the light of a recent amendment of the Act (Pub. L. 95-630, 92 Stat. 3677), that becomes effective on March 10, 1979, the Board has decided to: (1) Rescind Regulation S as no longer necessary; (2) revise and update its interpretations of the Act; and (3) send to State member banks through the Reserve Banks an announcement and explanation of the new provisions. The Board's actions are intended for simplification and clarification, and the revision of the interpretations will not impose any new requirements not contained in the Act.

EFFECTIVE DATE: March 10, 1979.

FOR FURTHER INFORMATION CONTACT:

Carl V. Howard, Attorney, Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202/452-3786).

SUPPLEMENTARY INFORMATION: The Bank Service Corporation Act (the "Act") (12 U.S.C. 1861-65), as originally adopted, required that, when a State member bank has bank services performed for it (such as check sorting and posting of interest on savings accounts), satisfactory assurances must be furnished to the Board that the performance of the services will be subject to the Board's regulation and examination to the same extent as if the services were being performed by the bank itself on its own premises. The purpose was to make certain that the appropriate Federal banking agency would not be frustrated in its examination of a bank subject primarily to its supervision because the bank's records have been transferred to another organization or some other organization is carrying out part or all of the bank's functions. Regulation S, "Bank Service Arrangements" (12 CFR Part 219), was issued by the Board in 1963 to implement the Act by specifying when and in what form assurances shall be provided to the Federal Reserve System.

However, the Congress has taken a more direct approach to supervision of bank service arrangements through an amendment of the Act contained in section 308 of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (Pub. L. 95-630; 92 Stat. 3677). Effective March 10, 1979, the performance of bank services for State member banks or their subsidiaries or affiliates will be subject to regulation and examination by the Board as a matter of law without the necessity for "assurances." A State member bank will be required to notify the Board of the existence of a bank service arrangement within 30 days after the making of the service contract or the performance of the service, whichever occurs first.

In the course of reviewing Regulation S in its Regulatory Improvement Project, the Board has concluded that the regulation will no longer be necessary and should be rescinded in the light of the legislative change. The provisions regarding "assurances" will become obsolete. The only provision of the regulation that will continue to have effect is the rule that the performance of legal, advisory, and administrative services, such as transportation or guard services, is not subject to examination unless specifically requested by the Board. This rule, which essentially is an interpretation of the term "bank services" in section 1(b) of the Act (12 U.S.C. 1861(b)), will be incorporated in the Board's published interpretations. No new regulatory provisions are considered necessary to reflect the recent amendment of the Act.

As in the past, the letter notifying the Board of the bank service arrangement is to be sent to the Federal Reserve Bank in whose district the State member bank has its main office. If a bank has an existing bank service arrangement on March 10, 1979, and has already furnished assurances regarding the arrangement in compliance with Regulation S, no additional notification regarding the arrangement is necessary.

As a further effort to improve its regulations, the Board is revising, updating, and streamlining its interpretations. The only substantive rulings being added are taken from: (1) An interpretation published in the *Federal Reserve Bulletin* (48 Fed. Res. Bull. 1429 (1962)) but not in the *Code of Federal Regulations;* and (2) the last sentence of section 219.4 relating to legal, advisory, and administrative services (discussed above).

The Board is also adding a short summary paragraph at the beginning of each interpretation to facilitate the public's finding of information and lessen the burden of reading materials that may not be relevant to the researcher's interest. Of course, if reliance is to be placed upon the interpretation, the full text must be consulted since the summary is only a paraphrase of the ruling rather than the ruling itself.

The Board is asking the Federal Reserve Banks to notify State member banks of the statutory and regulatory changes and to explain compliance with the amended Act.

The procedures of 5 U.S.C. 553(b) regarding notice, public participation and deferred effective date were not followed in connection with these regulatory changes because: (1) The Board finds that public participation is unnecessary since the rescission of the regulation will result in neither the granting of authority to the persons regulated, nor the imposition or relaxing of any requirements; and (2) rulemaking procedures do not apply to