

## SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

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

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AUTHORITY: 12 U.S.C. 343 *et seq.*, 347a, 347b, 347c, 347d, 348 *et seq.*, 357, 374, 374a and 461.

SOURCE: 45 FR 54010, Aug. 14, 1980, unless otherwise noted.

#### § 201.1 Authority, scope and purpose.

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

(b) *Purpose.* This part establishes rules under which Federal Reserve Banks may extend credit to depository institutions and others. Extending credit to depository institutions to accommodate commerce, industry, and agriculture is a principal function of Federal Reserve Banks. While open

market operations are the primary means of affecting the overall supply of reserves, the lending function of the Federal Reserve Banks is an effective method of supplying reserves to meet the particular credit needs of individual depository institutions. The lending functions of the Federal Reserve System are conducted with due regard to the basic objectives of monetary policy and the maintenance of a sound and orderly financial system.

[58 FR 68512, Dec. 28, 1993]

#### § 201.2 Definitions.

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

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

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

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

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

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

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

(iv) An *insured credit union* as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752(7)) or a credit

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union which is eligible to make application to become an insured credit union pursuant to section 201 of such Act (12 U.S.C. 1781);

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

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

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

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

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

(i) Sixty days:

(A) In any 120-day period;

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

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

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

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

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

(1) An advance under section 10B(1)(a) of the FRA that is outstanding to an undercapitalized or critically undercapitalized insured depository institution without payment having been demanded as of the end of the periods specified in paragraphs (d)(1) and (2) of this section; or

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

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

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

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

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

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

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

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

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

(i) *Viable*, with respect to a depository institution, means that the Board of Governors or the appropriate Federal banking agency has determined,

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giving due regard to the economic conditions and circumstances in the market in which the institution operates, that the institution is not critically undercapitalized, is not expected to become critically undercapitalized, and is not expected to be placed in conservatorship or receivership. Although there are a number of criteria that may be used to determine viability, the Board of Governors believes that ordinarily an undercapitalized insured depository institution is viable if the appropriate Federal banking agency has accepted a capital restoration plan for the depository institution under 12 U.S.C. 1831o(e)(2) and the depository institution is complying with that plan.

(j) *Eligible institution* means a depository institution that is in sound financial condition in the judgment of the lending Federal Reserve Bank.

(k) *Targeted federal funds rate* means the federal funds rate targeted by the Federal Open Market Committee.

[58 FR 68512, Dec. 28, 1993, as amended at 64 FR 41769, Aug. 2, 1999]

### § 201.3 Availability and terms.

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

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

rates at or above the basic discount rate may be applied to seasonal credit.

(1) Seasonal credit is only available if:

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

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

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

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

(c) *Extended credit.* Federal Reserve Banks extend credit to depository institutions under extended credit arrangements where similar assistance is not reasonably available from other sources, including special industry lenders. Such credit may be provided where there are exceptional circumstances or practices affecting a particular depository institution including sustained deposit drains, impaired access to money market funds, or sudden deterioration in loan repayment performance. Extended credit may also be provided to accommodate the needs of depository institutions, including those with longer term asset portfolios, that may be experiencing difficulties adjusting to changing money market conditions over a longer period, particularly at times of deposit disintermediation. A special rate or rates above the basic discount rate may be applied to extended credit.

(d) *Emergency credit for others.* In unusual and exigent circumstances, a Federal Reserve Bank may, after consultation with the Board of Governors, advance credit to individuals, partnerships, and corporations that are not depository institutions if, in the judgment of the Federal Reserve Bank, credit is not available from other sources and failure to obtain such credit would adversely affect the economy.

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The rate applicable to such credit will be above the highest rate in effect for advances to depository institutions. Where the collateral used to secure such credit consists of assets other than obligations of, or fully guaranteed as to principal and interest by, the United States or an agency thereof, an affirmative vote of five or more members of the Board of Governors is required before credit may be extended.

(e) *Special liquidity facility for century date change.* Federal Reserve Banks may extend credit between and including October 1, 1999, and April 7, 2000, or such later date as determined by the Board, under a special liquidity facility to ease liquidity pressures during the century date change period. This type of credit is available only to eligible institutions. This type of credit is granted at a special rate above the basic discount rate and other market rates for funds, is available for the entire length of the period, and is not subject to the conditions regarding specific use or exhaustion of other liquidity sources as is adjustment credit under paragraph (a) of this section.

[58 FR 68513, Dec. 28, 1993, as amended at 64 FR 41769, Aug. 2, 1999]

### § 201.4 Limitations on availability and assessments.

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

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

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

(3) After consultation with the Board of Governors.<sup>1</sup>

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

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

(2) After consultation with the Board of Governors.<sup>2</sup>

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

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

[58 FR 68514, Dec. 28, 1993]

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

<sup>2</sup> See footnote 1 in § 201.4(a)(3).

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### § 201.5 Advances and discounts.

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

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

(c) If a Federal Reserve Bank concludes that a depository institution will be better accommodated by the discount of paper than by an advance, it may discount any paper endorsed by the depository institution that meets therequirements specified in the FRA.

### § 201.6 General requirements.

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

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

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

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

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

(d) *Indirect credit for others.* Except for depository institutions that receive

credit under the Special Liquidity Facility described in § 201.3(e), no depository institution shall act as the medium or agent of another depository institution in receiving Federal Reserve credit except with the permission of the Federal Reserve bank extending credit.

[58 FR 68514, Dec. 28, 1993, as amended at 64 FR 41770, Aug. 2, 1999]

### § 201.7 Branches and agencies.

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

(b) This part applies to a United States branch or agency of a foreign bank in the same manner and to the same extent as an eligible institution if the foreign bank is in sound financial condition in the judgment of the lending Federal Reserve Bank.

[58 FR 68514, Dec. 28, 1993, as amended at 64 FR 41770, Aug. 2, 1999]

### § 201.8 Federal Intermediate Credit Banks.

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

[58 FR 68514, Dec. 28, 1993]

### § 201.9 No obligation to make advances or discounts.

A Federal Reserve Bank shall have no obligation to make, increase, renew, or extend any advance or discount to any depository institution.

[58 FR 68514, Dec. 28, 1993]

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**§ 201.51 Adjustment credit for depository institutions.**

The rates for adjustment credit provided to depository institutions under § 201.3(a) are:

| Federal Reserve Bank | Rate | Effective     |
|----------------------|------|---------------|
| Boston .....         | 6.0  | May 16, 2000. |
| New York .....       | 6.0  | May 19, 2000. |
| Philadelphia .....   | 6.0  | May 18, 2000. |
| Cleveland .....      | 6.0  | May 16, 2000. |
| Richmond .....       | 6.0  | May 16, 2000. |
| Atlanta .....        | 6.0  | May 17, 2000. |
| Chicago .....        | 6.0  | May 17, 2000. |
| St. Louis .....      | 6.0  | May 18, 2000. |
| Minneapolis .....    | 6.0  | May 18, 2000. |
| Kansas City .....    | 6.0  | May 17, 2000. |
| Dallas .....         | 6.0  | May 17, 2000. |
| San Francisco .....  | 6.0  | May 16, 2000. |

[65 FR 34048, May 26, 2000]

**§ 201.52 Other credit for depository institutions.**

(a) *Seasonal credit.* The rate for seasonal credit extended to depository institutions under § 201.3(b) is a flexible rate that takes into account rates on market sources of funds, but in no case will the rate charged be less than the rate for adjustment credit as set out in § 201.51.

(b) *Extended credit.* For extended credit to depository institutions under § 201.3(c), for credit outstanding for more than 30 days, a flexible rate will be charged that takes into account rates on market sources of funds, but in no case will the rate charged be less than the rate for adjustment credit, as set out in § 201.51, plus one-half percentage point. At the discretion of the Federal Reserve Bank, the 30-day time period may be shortened.

(c) *Special liquidity facility.* The rate for credit extended to eligible institutions under the special liquidity facility provisions in § 201.3(e) is equal to the targeted federal funds rate plus 1.5 percentage points on each day the credit is outstanding.

[Reg. A, 59 FR 29538, June 8, 1994, as amended at 59 FR 60700, Nov. 28, 1994; 64 FR 41770, Aug. 2, 1999]

INTERPRETATIONS

**§ 201.104 Eligibility of consumer loans and finance company paper.**

(a) The Board of Governors has clarified and modified its position with re-

spect to the eligibility of consumer loans and finance company paper for discount with and as collateral for advances by the reserve banks.

(b) Section 13, paragraph 2, of the Federal Reserve Act authorizes a Federal Reserve Bank, under certain conditions, to discount for member banks

\* \* \* notes, drafts, and bills of exchange arising out of actual commercial transactions; that is, notes, drafts, and bills of exchange issued or drawn for agricultural, industrial, or commercial purposes, or the proceeds of which have been used, or are to be used, for such purposes, the Board of Governors of the Federal Reserve System to have the right to determine or define the character of the paper thus eligible for discount, within the meaning of this Act.

(c) It continues to be the opinion of the Board that borrowing for the purpose of purchasing goods is borrowing for a commercial purpose, whether the borrower intends to use the goods himself or to resell them. Hence, loans made to enable consumers to purchase automobiles or other goods should be included under commercial, agricultural, and industrial paper within the meaning of the Federal Reserve Act, and as such are eligible for discounting with the Reserve Banks and as security for advances from the Reserve Banks under section 13, paragraph 8, of the Federal Reserve Act as long as they conform to requirements with respect to maturity and other matters. This applies equally to loans made directly by banks to consumers and to paper accepted by banks from dealers or finance companies. It also applies to notes of finance companies themselves as long as the proceeds of such notes are used to finance the purchase of consumer goods or for other purposes which are eligible within the meaning of the Federal Reserve Act.

(d) If there is any question as to whether the proceeds of a note of a finance company have been or are to be used for a commercial, agricultural, or industrial purpose, a financial statement of the finance company reflecting an excess of notes receivable which appear eligible for rediscount (without regard to maturity) over total current liabilities (i.e., notes due within 1 year) may be taken as an indication of eligibility. Where information is lacking as

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to whether direct consumer loans by a finance company are for eligible purposes, it may be assumed that 50 percent of such loans are "notes receivable which appear eligible for rediscount". In addition, that language should be regarded as including notes given for the purchase of mobile homes that are acquired by a finance company from a dealer-seller of such homes.

(e) The principles stated above apply not only to notes of a finance company engaged in making consumer loans but also to notes of a finance company engaged in making loans for other eligible purposes, including business and agricultural loans. Under section 13a of the Federal Reserve Act, paper representing loans to finance the production, marketing, and carrying of agricultural products or the breeding, raising, fattening, or marketing of livestock is eligible for discount if the paper has a maturity of not exceeding 9 months. Consequently, a note of a finance company the proceeds of which are used by it to make loans for such purposes is eligible for discount or as security for a Federal Reserve advance, and such a note, unlike the note of a finance company making consumer loans, may have a maturity of up to 9 months.

[37 FR 4701, Mar. 4, 1972]

### § 201.107 Eligibility of demand paper for discount and as security for advances by Reserve Banks.

(a) The Board of Governors has reconsidered a ruling made in 1917 that demand notes are ineligible for discount under the provisions of the Federal Reserve Act. (1917 Federal Reserve Bulletin 378.)

(b) The basis of that ruling was the provision in the second paragraph of section 13 of the Federal Reserve Act that notes, drafts, and bills of exchange must have a maturity at the time of discount of not more than 90 days, exclusive of grace. The ruling stated that

a demand note or bill is not eligible under the provisions of the act, since it is not in terms payable within the prescribed 90 days, but, at the option of the holder, may not be presented for payment until after that time.

(c) It is well settled as a matter of law, however, that demand paper is due

and payable on the date of its issue. The generally accepted legal view is stated in Beutel's Brannan on Negotiable Instruments Law, at page 305, as follows:

The words *on demand* serve the same purpose as words making instruments payable at a specified time. They fix maturity of the obligation and do not make demand necessary, but mean that the instrument is due, payable and matured when made and delivered.

(d) Accordingly, the Board has concluded that, since demand paper is due and payable on the date of its issue, it satisfies the maturity requirements of the statute. Demand paper which otherwise meets the eligibility requirements of the Federal Reserve Act and this part Regulation A, therefore, is eligible for discount and as security for advances by Reserve Banks.

[31 FR 5443, Apr. 16, 1966]

### § 201.108 Obligations eligible as collateral for advances.

(a) Section 3(a) of Pub. L. 90-505, approved September 21, 1968, amended the eighth paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 347) to authorize advances thereunder to member banks "secured by such obligations as are eligible for purchase under section 14(b) of this Act." The relevant part of such paragraph had previously referred only to "notes \* \* \* eligible \* \* \* for purchase", which the Board had construed as not including obligations generally regarded as securities. (See 1962 Federal Reserve Bulletin 690, § 201.103(d).)

(b) Under section 14(b) direct obligations of, and obligations fully guaranteed as to principal and interest by, the United States are eligible for purchase by Reserve Banks. Such obligations include certificates issued by the trustees of Penn Central Transportation Co. that are fully guaranteed by the Secretary of Transportation. Under section 14(b) direct obligations of, and obligations fully guaranteed as to principal and interest by, any agency of the United States are also eligible for purchase by Reserve Banks. Following are the principal agency obligations eligible as collateral for advances:

(1) Federal Intermediate Credit Bank debentures;

- (2) Federal Home Loan Bank notes and bonds;
- (3) Federal Land Bank bonds;
- (4) Bank for Cooperative debentures;
- (5) Federal National Mortgage Association notes, debentures and guaranteed certificates of participation;
- (6) Obligations of or fully guaranteed by the Government National Mortgage Association;
- (7) Merchant Marine bonds;
- (8) Export-Import Bank notes and guaranteed participation certificates;
- (9) Farmers Home Administration insured notes;
- (10) Notes fully guaranteed as to principal and interest by the Small Business Administration;
- (11) Federal Housing Administration debentures;
- (12) District of Columbia Armory Board bonds;
- (13) Tennessee Valley Authority bonds and notes;
- (14) Bonds and notes of local urban renewal or public housing agencies fully supported as to principal and interest by the full faith and credit of the United States pursuant to section 302 of the Housing Act of 1961 (42 U.S.C. 1421a(c), 1452(c)).
- (15) Commodity Credit Corporation certificates of interest in a price-support loan pool.
- (16) Federal Home Loan Mortgage Corporation notes, debentures, and guaranteed certificates of participation.
- (17) U.S. Postal Service obligations.
- (18) Participation certificates evidencing undivided interests in purchase contracts entered into by the General Services Administration.
- (19) Obligations entered into by the Secretary of Health, Education, and Welfare under the Public Health Service Act, as amended by the Medical Facilities Construction and Modernization Amendments of 1970.
- (20) Obligations guaranteed by the Overseas Private Investment Corp., pursuant to the provisions of the Foreign Assistance Act of 1961, as amended.

(c) Nothing less than a full guarantee of principal and interest by a Federal agency will make an obligation eligible. For example, mortgage loans insured by the Federal Housing Adminis-

tration are not eligible since the insurance contract is not equivalent to an unconditional guarantee and does not fully cover interest payable on the loan. Obligations of international institutions, such as the Inter-American Development Bank and the International Bank for Reconstruction and Development, are also not eligible, since such institutions are not agencies of the United States.

(d) Also eligible for purchase under section 14(b) are "bills, notes, revenue bonds, and warrants with a maturity from date of purchase of not exceeding 6 months, issued in anticipation of the collection of taxes or in anticipation of the receipt of assured revenues by any State, county, district, political subdivision, or municipality in the continental United States, including irrigation, drainage and reclamation districts."<sup>3</sup> In determining the eligibility of such obligations as collateral for advances, but the Reserve Bank will satisfy itself that sufficient tax or other assured revenues earmarked for payment of such obligations will be available for that purpose at maturity, or within 6 months from the date of the advance if no maturity is stated. Payments due from Federal, State or other governmental units may, in the Reserve Bank's discretion, be regarded as "other assured revenues"; but neither the proceeds of a prospective issue of securities nor future tolls, rents or similar collections for the voluntary use of government property for non-governmental purposes will normally be so regarded. Obligations with original maturities exceeding 1 year would not ordinarily be self-liquidating as contemplated by the statute, unless at the time of issue provision is made for a redemption or sinking fund that will be sufficient to pay such obligations at maturity.

[Reg. A, 33 FR 17231, Nov. 21, 1968, as amended at 34 FR 1113, Jan. 24, 1969; 34 FR 6417, Apr. 12, 1969; 36 FR 8441, May 6, 1971; 37 FR 24105, Nov. 14, 1972; 43 FR 53709, Nov. 17, 1978; 58 FR 68515, Dec. 28, 1993]

<sup>3</sup>Paragraph 3 of section 1 of the Federal Reserve Act (12 U.S.C. 221) defines *the continental United States* to mean "the States of the United States and the District of Columbia", thus including Alaska and Hawaii.

**§ 201.109 Eligibility for discount of mortgage company notes.**

(a) The question has arisen whether notes issued by mortgage banking companies to finance their acquisition and temporary holding of real estate mortgages are eligible for discount by Reserve Banks.

(b) Under section 13 of the Federal Reserve Act the Board has authority to define what are "agricultural, industrial, or commercial purposes", which is the statutory criterion for determining the eligibility of notes and drafts for discount. However, such definition may not include paper "covering merely investments or issued or drawn for the purpose of carrying or trading in stocks, bonds, or other investment securities".

(c) The legislative history of section 13 suggests that Congress intended to make eligible for discount "any paper drawn for a legitimate business purpose of any kind"<sup>4</sup> and that the Board, in determining what paper is eligible, should place a "broad and adaptable construction"<sup>5</sup> upon the terms in section 13. It may also be noted that Congress apparently considered paper issued to carry investment securities as paper issued for a "commercial purpose", since it specifically prohibited the Board from making such paper eligible for discount. If "commercial" is broad enough to encompass investment banking, it would also seem to include mortgage banking.

(d) In providing for the discount of commercial paper by Reserve Banks, Congress obviously intended to facilitate the current financing of agriculture, industry, and commerce, as opposed to long-term investment.<sup>6</sup> In the main, trading in stocks and bonds is investment-oriented; most securities transactions do not directly affect the production or distribution of goods and services. Mortgage banking, on the other hand, is essential to the construction industry and thus more closely related to industry and com-

merce. Although investment bankers also perform similar functions with respect to newly issued securities, Congress saw fit to deny eligibility to all paper issued to finance the carrying of securities. Congress did not distinguish between newly issued and outstanding securities, perhaps covering the larger area in order to make certain that the area of principal concern (i.e., trading in outstanding stocks and bonds) was fully included. Speculation was also a major Congressional concern, but speculation is not a material element in mortgage banking operations. Mortgage loans would not therefore seem to be within the purpose underlying the exclusions from eligibility in section 13.

(e) Section 201.3(a) provides that a negotiable note maturing in 90 days or less is not eligible for discount if the proceeds are used "for permanent or fixed investments of any kind, such as land, buildings or machinery, or for any other fixed capital purpose". However, the proceeds of a mortgage company's commercial paper are not used by it for any permanent or fixed capital purpose, but only to carry temporarily an inventory of mortgage loans pending their "packaging" for sale to permanent investors that are usually recurrent customers.

(f) In view of the foregoing considerations the Board concluded that notes issued to finance such temporary "warehousing" of real estate mortgage loans are notes issued for an industrial or commercial purpose, that such mortgage loans do not constitute "investment securities", as that term is used in section 13, and that the temporary holding of such mortgages in these circumstances is not a permanent investment by the mortgage banking company. Accordingly, the Board held that notes having not more than 90 days to run which are issued to finance the temporary holding of mortgage loans are eligible for discount by Reserve Banks.

[35 FR 527, Jan. 15, 1970, as amended at 58 FR 68515, Dec. 28, 1993]

**§ 201.110 Goods held by persons employed by owner.**

(a) The Board has been asked to re-view an Interpretation it issued in 1933

<sup>4</sup>House Report No. 69, 63d Cong., p. 48.

<sup>5</sup>50 Cong. Rec. 4675 (1913) (remarks of Rep. Phelan).

<sup>6</sup>50 Cong. Rec. 5021 (1913) (remarks of Rep. Thompson of Oklahoma); 50 Cong. Rec. 4731-32 (1913) (remarks of Rep. Borland).

concerning the eligibility for rediscount by a Federal Reserve Bank of bankers' acceptances issued against field warehouse receipts where the custodian of the goods is a present or former employee of the borrower. [¶ 1445 Published Interpretations, 1933 BULLETIN 188] The Board determined at that time that the acceptances were not eligible because such receipts do not comply with the requirement of section 13 of the Federal Reserve Act that a banker's acceptance be "secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples," nor with the requirement of section XI of the Board's Regulation A that it be "secured at the time of acceptance by a warehouse, terminal, or other similar receipt, conveying security title to such staples, issued by a party independent of the customer."

The requirement that the receipt be "issued by a party independent of the customer" was deleted from Regulation A in 1973, and thus the primary issue for the Board's consideration is whether a field warehouse receipt is a document "securing title" to readily marketable staples.

(b) While bankers' acceptances secured by field warehouse receipts are rarely offered for rediscount or as collateral for an advance, the issue of "eligibility" is still significant. If an ineligible acceptance is discounted and then sold by a member bank, the proceeds are deemed to be "deposits" under §204.1(f) of Regulation D and are subject to reserve requirements.

(c) In reviewing this matter, the Board has taken into consideration the changes that have occurred in commercial law and practice since 1933. Modern commercial law, embodied in the Uniform Commercial Code, refers to "perfecting security interests" rather than "securing title" to goods. The Board believes that if, under State law, the issuance of a field warehouse receipt provides the lender with a perfected security interest in the goods, the receipt should be regarded as a document "securing title" to goods for the purposes of section 13 of the Federal Reserve Act. It should be noted, however, that the mere existence of a perfected secu-

rity interest alone is not sufficient; the Act requires that the acceptance be secured by a warehouse receipt or its equivalent.

(d) Under the U.C.C., evidence of an agreement between the secured party and the debtor must exist before a security interest can attach. [U.C.C. section 9-202.] This agreement may be evidenced by: (1) A written security agreement signed by the debtor, or (2) the collateral being placed in the possession of the secured party or his agent [U.C.C. section 9-203]. Generally, a security interest is perfected by the filing of a financing statement, [U.C.C. section 9-302.] However, if the collateral is in the possession of a bailee, then perfection can be achieved by:

(1) Having warehouse receipts issued in the name of the secured party; (2) notifying the bailee of the secured party's interest; or (3) having a financing statement filed. [U.C.C. section 9-304(3).]

(e) If the field warehousing operation is properly conducted, a security interest in the goods is perfected when a warehouse receipt is issued in the name of the secured party (the lending bank). Therefore, warehouse receipts issued pursuant to a bona fide field warehousing operation satisfy the legal requirements of section 13 of the Federal Reserve Act. Moreover, in a properly conducted field warehousing operation, the warehouse manager will be trained, bonded, supervised and audited by the field warehousing company. This procedure tends to insure that he will not be impermissibly controlled by his former (or sometimes present) employer, the borrower, even though he may look to the borrower for reemployment at some future time. A prudent lender will, of course, carefully review the field warehousing operation to ensure that stated procedures are satisfactory and that they are actually being followed. The lender may also wish to review the field warehousing company's fidelity bonds and legal liability insurance policies to ensure that they provide satisfactory protection to the lender.

(f) If the warehousing operation is not conducted properly, however, and the manager remains under the control of the borrower, the security interest

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may be lost. Consequently, the lender may wish to require a written security agreement and the filing of a financing statement to insure that the lender will have a perfected security interest even if it is later determined that the field warehousing operation was not properly conducted. It should be noted however, that the Federal Reserve Act clearly requires that the bankers' acceptance be secured by a warehouse receipt in order to satisfy the requirements of eligibility, and a written security agreement and a filed financing statement, while desirable, cannot serve as a substitute for a warehouse receipt.

(g) This Interpretation is based on facts that have been presented in regard to field warehousing operations conducted by established, professional field warehouse companies, and it does not necessarily apply to all field warehousing operations. Thus ¶1430 and ¶1440 of the Published Interpretations [1918 BULLETIN 31 and 1918 BULLETIN 862] maintain their validity with regard to corporations formed for the purpose of conducting limited field warehousing operations. Furthermore, the prohibition contained in ¶1435 Published Interpretations [1918 BULLETIN 634] that "the borrower shall not have access to the premises and shall exercise no control over the goods stored" retains its validity, except that access for inspection purposes is still permitted under ¶1450 [1926 BULLETIN 666]. The purpose for the acceptance transaction must be proper and cannot be for speculation [¶1400, 1919 BULLETIN 858] or for the purpose of furnishing working capital [¶1405, 1922 BULLETIN 52].

(h) This interpretation supersedes only the previous ¶1445 of the Published Interpretations [1933 BULLETIN 188], and is not intended to affect any other Board Interpretation regarding field warehousing.

(12 U.S.C. 342 et seq.)

[43 FR 21434, May 18, 1978]

### PART 202—EQUAL CREDIT OPPORTUNITY (REGULATION B)

REGULATION B (EQUAL CREDIT OPPORTUNITY)  
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SUPPLEMENT I TO PART 202—OFFICIAL STAFF INTERPRETATIONS

AUTHORITY: 15 U.S.C. 1691–1691f.

SOURCE: Reg. B, 50 FR 48026, Nov. 20, 1985, unless otherwise noted.

#### REGULATION B (EQUAL CREDIT OPPORTUNITY)

### § 202.1 Authority, scope and purpose.

(a) *Authority and scope.* This regulation is issued by the Board of Governors of the Federal Reserve System pursuant to title VII (Equal Credit Opportunity Act) of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 *et seq.*). Except as otherwise provided herein, the regulation applies to all persons who are creditors, as defined in §202.2(1). Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 7100–0201.

(b) *Purpose.* The purpose of this regulation is to promote the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status, or