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FEDERAL RESERVE SYSTEM

12 CFR Part 215

[Regulation O; Docket No. R-0875]

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

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting an amendment to Regulation O to conform the definition of unimpaired capital and unimpaired surplus used in calculating a bank's Regulation O lending limit to the definition of capital and surplus recently adopted by the Office of the Comptroller of the Currency in calculating the limit on loans by a national bank to a single borrower. The final rule will reduce the regulatory burden for member banks monitoring lending to their insiders.

EFFECTIVE DATE: Effective July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Gregory Baer, Managing Senior Counsel (202/452-3236), or Gordon Miller, Attorney (202/452-2534), Legal Division; or William G. Spaniel, Assistant to the Director (202/452-3469), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

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

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

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

The Office of the Comptroller of the Currency (OCC) has recently revised its regulatory definition of unimpaired capital and unimpaired surplus for purposes of implementing the single borrower limit of the National Bank Act. See 60 FR 8,533, February 15, 1995. Under that revised definition, a national bank's "capital and surplus" are equal to Tier 1 and Tier 2 capital included in the calculation of the bank's risk-based capital together with the amount of the bank's allowance for loan and lease losses not included in this calculation. 12 CFR 32.2(b).

On April 20, 1995 (60 FR 19,689), the Board proposed to amend Regulation O to conform its definition of unimpaired capital and unimpaired surplus to the OCC's revised definition of capital and surplus. As stated in the notice of proposed rulemaking, the Board believes that in substantially all cases calculating the insider lending limits of Regulation O using the revised

definition would not significantly increase or decrease a bank's insider lending limit. The elimination of the separate definition of unimpaired capital and unimpaired surplus in Regulation O therefore is expected to create minimal disruption in lending by member banks to their insiders and to insiders of their affiliates, while eliminating confusion and duplication of effort caused by requiring banks to calculate capital two different ways for two regulations.

The Board received 24 written comments, including comments from 11 banks, 3 bank holding companies, 6 Federal Reserve Banks, and 4 trade associations. Twenty-three commenters supported the Board's amendment. All commenters in support felt that the amendment would make recordkeeping simpler and more consistent, and several also noted that the amendment would not significantly change their lending level. Two commenters noted that the amendment would both greatly reduce its recordkeeping burden and help its compliance.

One commenter opposed the amendment and expressed concern that a bank's Tier 1 and Tier 2 capital did not include certain intangible assets, and that eliminating these assets could harm some community banks by effectively reducing their lending limits. One bank holding company supporting the amendment also noted that some of its affiliated banks would have their lending limits reduced because of the goodwill on their books. The Board believes, however, that few small community banks have a sufficient amount of intangible assets, such as goodwill or purchased mortgage servicing rights, on their books to cause a significant reduction of their insider lending limits from their current levels. Accordingly, after reviewing the public comments, the Board is adopting the amendment as proposed.

Determination of Effective Date

Because the final rule adjusts a requirement on insured depository institutions, the final rule will become effective July 1, 1995, the first day of the calendar quarter after the date of the final rule's publication. See 12 U.S.C. 4802(b). For the foregoing reason, the final rule will become effective without regard for the 30-day period provided for in 5 U.S.C. 553(d).

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

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to publish a final regulatory flexibility analysis when the agency publishes a final rule. Two of the requirements of an initial regulatory flexibility analysis (5 U.S.C. 604(b))—a succinct statement of the need for, and the objectives of, the rule, and a summary of the issues raised by the public comments received, the agency assessment thereof, and any changes made in response thereto—are contained in the supplementary information above. No significant alternatives to the final rule were considered by the agency.

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the amendment to Regulation O will not have a significant economic impact on a substantial number of small entities, and that any impact on those entities should be positive. The amendment will reduce the regulatory burden for most banks by simplifying the calculation of lending limits without significantly changing the amount of the limit, and will have no effect in other cases.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the Board reviewed the information collection requirements of its amendment to Regulation O under authority delegated to the Board by the Office of Management and Budget (5 CFR Part 1320, Appendix A) after considering comments received during the public comment period.

The recordkeeping requirements are authorized by 12 U.S.C. 375a(6) and (10), 375b(7), and 1972(2)(G). This information is required to prevent preferential lending by a member bank to its executive officers, directors, principal shareholders, and their related interests. The amendment is not estimated to change the annual burden of recordkeeping associated with Regulation O for state member banks, which is estimated to be 6,255 hours.

List of Subjects in 12 CFR Part 215

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

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

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

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

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

2. Section 215.2 is amended as follows:

- a. The last sentence of paragraph (i) introductory text is revised;
 - b. Paragraphs (i)(1) and (i)(2) are revised; and
 - c. Paragraph (i)(3) is removed.
- The revisions read as follows:

§215.2 Definitions.

* * * * *

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

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

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

* * * * *

By order of the Board of Governors of the Federal Reserve System, June 7, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–14413 Filed 6–12–95; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 130

Small Business Development Centers

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is promulgating regulations governing the Small Business Development Center (SBDC) Program. Since enactment of Pub. L. 96–302 establishing the SBDC Program in 1980, the Program has been operating under direct statutory authority, without regulations. This rule will establish a framework for more efficient operation.

EFFECTIVE DATE: This rule is effective on June 13, 1995.

FOR FURTHER INFORMATION CONTACT: Hardy Patten, Program Manager, (202) 205–6766.

SUPPLEMENTARY INFORMATION: On November 28, 1994, SBA proposed a rule (59 FR 60723) to establish a regulatory framework for the SBDC Program, which is administered pursuant to Section 21 of the Small Business Act, 15 U.S.C. § 648 (the “Act”). In this Program, SBA and the SBDC networks provide managerial advice and technical assistance to enhance the growth, innovation, and productivity of small businesses. The issuance of regulations will clarify Program procedures.

During a 30-day public comment period on the proposed rule, SBA received four comment letters raising 24 individual concerns. After analyzing these comments, SBA has decided to make appropriate changes to the rule.

In addition, in accordance with its policy to streamline existing and proposed regulations, SBA scrutinized its proposed rule for duplication and excess verbiage, eliminating more than 25% of the body of the rule, without altering its substance. The following summary of issues raised does not discuss streamlining revisions, unless a comment pertained to a portion of the proposed rule which has been deleted or otherwise revised.

Summary of Issues Raised by Public Comment

Section 130.100(b) of the proposed rule, providing an overview of the Program, has been merged into section 130.100(a). The portion of the section which referred to SBA consultation with SBDC Directors and recognized organizations representing SBDCs in the formulation of the annual Program Announcement and the development of Program guidelines was duplicated in section 130.350(a) and was deleted from section 130.100.

Several comments were received regarding the consultation provision. One comment correctly pointed out that section 21(a)(3)(A) of the Act only requires SBA to recognize and consult with the organization of which more than a majority of SBDCs are members. SBA has revised the proposed rule to refer in section 130.350(a) to “the Recognized Organization”, instead of recognized organizations, and to add a definition of Recognized Organization at new section 130.110(y).

Two other comments suggested that the regulation describe the timing and means of obtaining the consultation.