RESCINDED

Department of the Treasury
Office of Thrift Supervision

Transmittal

November 26, 1996 Number: 161

This rescission does not change the applicability of the conveyed document. To determine the applicability of the conveyed document, refer to the original issuer of the document.

On November 8, 1996, the Board of Governors of the Federal Reserve System (Board) adopted a final rule implementing a change to 12 CFR 215 (Regulation O). Regulation O governs loans to executive officers, directors, and principal shareholders of member banks. The Office of Thrift Supervision has incorporated Regulation O by reference at 12 CFR 563.43. The provisions of Regulation O, therefore, apply to a savings associations, its subsidiaries and insiders (directors, officers, and related interests) in the same manner and to the same extent as if the association were a bank and a member bank.

The final rule became effective on November 8, 1996. Attached is a copy of the full text of the change from the *Federal Register* (Volume 61, No. 218, pp. 57769–57770, including a correction published on November 19, 1996 in Vol. 61, No. 224, p. 58782), which permits insiders of an institution or its affiliates to obtain loans under company-wide employee benefit plans. This amendment conforms the regulations to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). In this final rulemaking, the Board also simplified the procedure for an institution's board of directors to exclude executive officers and directors of an affiliate from policymaking functions of the bank, and thereby from the restrictions of Regulation O.

The Board also adopted a supplemental notice of proposed rulemaking on November 8, 1996 (*Federal Register* Volume 61, No. 218, pp. 57797–57799). The supple-mental rulemaking proposes to amend Regulation O by exempting executive officers or directors of the institution's affiliates from the restrictions on extensions of credit if the following conditions exist:

- The individual is not engaged in major policymaking functions of the institution; and
- The affiliate did not account for more than 10 percent of the consolidated assets of the institution's holding company.

This supplemental proposal results from a recent change in the exemptive authority of the Board under the EGRPRA. Comments on this proposal are due to the Board by December 9, 1996. Questions may be directed to Donna Deale, Supervision Policy, (202) 906-7488 or Karen Osterloh, Regulations and Legislation Division, Chief Counsel's Office, (202) 906-6639.

John F. Downey
Executive Director, Supervision
Office of Thrift Supervision

Attachment

Rules and Regulations

Federal Register
Vol. 61, No. 218
Friday, November 8, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RESERVE SYSTEM

12 CFR Part 215

[Regulation O; Docket No. R–0939]

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 amending its Regulation O, which limits how much and on what terms a bank may lend to its own insiders and insiders of its affiliates, in order to permit insiders of a bank and of the bank's affiliates to obtain loans under company-wide employee benefit plans. This amendment conforms the regulation to the Economic Growth and Regulatory Paperwork Reduction Act of 1996, which was recently passed by Congress. Currently, participation in such plans is prohibited when loans under such plans are on terms not available to the general public.

The Board also is amending Regulation O to simplify the procedure for a bank's board of directors to exclude executive officers and directors of an affiliate from policymaking functions of the bank, and thereby from the restrictions of Regulation O.

EFFECTIVE DATE: November 4, 1996.

FOR FURTHER INFORMATION CONTACT: Gregory Baer, Managing Senior Counsel (202/452–3236), or Gordon Miller, Attorney (202/452–2534), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

Section 22(h) of the Federal Reserve Act restricts insider lending by banks, and Regulation O implements section 22(h). 12 U.S.C. 375b; 12 CFR Part 215. Regulation O imposes quantitative limits on loans to insiders and requires that such loans not be on "preferential" terms—that is, on the same terms a person not affiliated with the bank would receive. 12 CFR 215.4(a). For this purpose, an "insider" means an executive officer, director, or principal shareholder, and loans to an insider include loans to any "related interest" of the insider, including any company controlled by the insider. 12 CFR 215.2(h). Section 22(h) also restricts lending to insiders of a bank's parent bank holding company and any other subsidiary of that bank holding company. 12 U.S.C. 22(h)(8).

Widely Available Benefit Plans

On September 30, 1996, in the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA),[1] Congress amended the preferential lending prohibition of section 22(h)(2) by adding an exception for extensions of credit made pursuant to a program that is widely available to all employees of the lending bank and does not give preference to insiders over other employees. The amendment to section 22(h) was effective September 30, 1996.

Previously, section 22(h)(2) prohibited insiders from participating in programs available to all other employees of a lending bank, such as a reduction or waiver of closing costs for home mortgage loans, because members of the general public were not entitled to obtain credit on the same terms. The legislative history of EGRPRA indicates that Congress amended section 22(h) because participation by insiders in programs as described above would not affect any of the core restrictions on insider lending under the statute.[2] In other words, participation by an insider in a plan that is widely available to employees of a bank would not constitute abuse of the insider's position and would not substantially contribute to a concentration of credit among insiders.

The Board is amending Regulation O to conform to the amendment in EGRPRA. Consistent with section 22(h)(8), the amendment also expressly includes loans to insiders of an affiliate in the new exception.[3]

Exclusion of Insiders of Affiliates From Policymaking at a Bank

The Board previously published for public comment a proposal to simplify the requirements for board of directors action to exclude an executive officer of an affiliate from participating in major policymaking functions of the lending bank.[4] Currently, in order to be exempt from Regulation O, an executive officer must be excluded by resolution of the board of directors of both the lending bank and the affiliate for which the executive officer works. 12 CFR 215.2(e)(2)(i). Because a bank has full control over who participates in its policymaking, however, the Board proposed that requiring a board resolution of the affiliate in addition to a board resolution of the lending bank was superfluous and unduly burdensome. Forty-four public comments were received on the proposal, of which 18 generally supported the simplification of the resolution requirements, with no comments opposed. Accordingly, the Board is deleting this requirement from the existing exception for executive officers of affiliates.

Four commenters on the proposal also recommended that the resolution requirements be further simplified by permitting a bank to adopt a resolution listing by name or title only the insiders of the bank and its affiliates who are authorized to participate in major policymaking functions of the bank and generally excluding all other persons from participation. Currently, the regulation requires the executive officer to be excluded by name or title from participating in such functions. 12 CFR 215.2(e)(2)(i). Because a bank's board of

[1] Pub. L. 104–208, section 2211 (1996).

[2] *See* S. Rep. No. 104–185, 104th Cong., 1st Sess. 25 (1995).

[3] Insiders of affiliates are eligible because they are deemed to be insiders of member banks for all purposes under the statute. *See* 12 U.S.C. 375b(8). Thus, an insider of an affiliate would be eligible for a benefit or compensation program if the bank made the benefit or compensation widely available to employees of that affiliate, and did not give preference to insiders over other employees of that affiliate.

[4] 61 FR 19663 (May 3, 1996).

directors has formal control over who participates in the bank's policymaking, the Board believes that an affirmative resolution of the board should accurately identify all persons participating. Accordingly, the Board is amending the resolution requirement to provide for such a resolution.

Some commenters also proposed that the board of directors of a bank holding company be permitted to adopt a resolution on behalf of its subsidiaries. The Board does not consider this procedure to be appropriate, however, in view of the formal responsibility of a bank's own board of directors to set the bank's policy and the variations that exist among bank holding companies in the degree of influence they exercise over internal policymaking at their subsidiary banks. Another commenter suggested that the requirement for a board of directors resolution be dropped entirely. The Board believes that the resolution requirement should be retained, in order to ensure that a bank's major policymakers are identified at a level within the bank that is qualified to address the issue authoritatively.

Simultaneously with this notice, as a result of a change in the exemptive authority of the Board under EGRPRA, the Board also is proposing an amendment to Regulation O to permit a bank to exempt directors of an affiliate from the restrictions of Regulation O. The amended procedures described above concerning the resolution requirements to exempt executive officers of an affiliate also are included in the proposed amendment to exempt directors of an affiliate. Public comment on the amended procedures is requested as part of that proposed rulemaking.

Determination of Effective Date

Because the final rule is a substantive rule that grants an exemption or relieves a restriction, and the final rule concerning participation by insiders and insiders of affiliates in employee benefit plans is intended solely to conform the regulation to section 22(h), as amended effective September 30, 1996, the Board has determined, for good cause, that the final rule will become effective immediately upon the date of Board action adopting the amendment. *See* 5 U.S.C. 553(d). The final rule imposes no additional reporting, disclosure, or other new requirements on insured depository institutions. *See* 12 U.S.C. 4802(b).

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 a final 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 permitting insiders of banks and insiders of their affiliates to participate in lending programs generally available to employees and by simplifying the procedures for exempting insiders of affiliates from the insider lending restrictions in general.

Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1980 (44 U.S.C. Ch. 35; 5 CFR Part 1320, Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget.

The recordkeeping requirements are authorized by 12 U.S.C. 375b(10). This information is required to evidence compliance with the requirements of section 22(h) of the Federal Reserve Act. The amendment is estimated to result in some reduction in the annual burden of recordkeeping associated with Regulation O for state member banks.

The Federal Reserve System may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0036.

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, and pursuant to the Board's authority under section 22(h) of the Federal Reserve Act (12 U.S.C. 375b), the Board is amending 12 CFR Part 215, subpart A, as follows:

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

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

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

2. Section 215.2 is amended by revising paragraph (e)(2)(i) to read as follows:

§ 215.2 Definitions.

* * * * *

(e) * * *

(2) * * *

(i) The board of directors of the member bank adopts a resolution identifying (by name or by title) all persons authorized to participate in major policymaking functions of the member bank, and the executive officer of the affiliate is not included in the resolution and does not actually participate in such major policymaking functions; and

* * * * *

3. Section 215.4 is amended as follows:

a. Paragraphs (a) introductory text, (a)(1) and (a)(2) are redesignated as paragraphs (a)(1) introductory text, (a)(1)(i) and (a)(1)(ii), respectively;

b. A heading is added to newly designated paragraph (a)(1); and

c. A new paragraph (a)(2) is added.

The additions read as follows:

§ 215.4 General prohibitions.

(a) *Terms and creditworthiness*—(1) *In general.* * * *

(2) *Exception.* Nothing in this paragraph (a) shall prohibit any extension of credit made pursuant to a benefit or compensation program—

(i) That is widely available to employees of the member bank and, in the case of extensions of credit to an insider of its affiliates, is widely available to employees of the affiliates at which that person is an insider; and

(ii) That does not give preference to any insider of the member bank over other employees of the member bank and, in the case of extensions of credit to an insider of its affiliates, does not give preference to any insider of its affiliates over other employees of the affiliates at which that person is an insider.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 4, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–28720 Filed 11–7–96; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 215

[Regulation O; Docket No. R-0939]

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

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; correction.

SUMMARY: This document corrects the announced effective date of recent amendments to Regulation O, which limits how much and on what terms a bank may lend to its own insiders and insiders of its affiliates. These amendments were effective under the Small Business Regulatory Enforcement Fairness Act of 1996, on November 8, 1996, the date they appeared in the Federal Register. The final rule as published, however, incorrectly stated that they were effective November 4, 1996, the date the Board adopted them.

EFFECTIVE DATE: Effective November 4, 1996, the effective date for the final rule published at 61 FR 57769 is corrected to be November 8, 1996.

FOR FURTHER INFORMATION CONTACT: Gregory Baer, Managing Senior Counsel (202/452-3236), or Gordon Miller, Attorney (202/452-2534), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544).

By order of the Board of Governors of the Federal Reserve System, November 13, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96-29505 Filed 11-18-96; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

12 CFR Part 215

[Regulation O; Docket No. R–0940]

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: Supplemental notice of proposed rulemaking.

SUMMARY: The supplemental notice of proposed rulemaking (supplemental proposal) would amend the Board's Regulation O, which limits how much and on what terms a bank may lend to its own insiders and insiders of its affiliates. Under the supplemental proposal, the restrictions of Regulation O would not apply to extensions of credit by a bank to an executive officer or director of the bank's affiliate, provided that the executive officer or director was not engaged in major policymaking functions of the bank and the affiliate did not account for more than 10 percent of the consolidated assets of the bank's holding company.

The supplemental proposal supersedes a similar proposal included in a proposed rule published by the Board on May 3, 1996. The supplemental proposal results from a recent change in the exemptive authority of the Board under the Economic Growth and Regulatory Paperwork Reduction Act of 1996. Other provisions of the earlier proposal have been adopted by the Board as a final rule.

DATES: Comments must be received on or before December 9, 1996.

ADDRESSES: Comments should refer to Docket No. R–0940 and be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may also be delivered to the guard station in the Eccles Building Courtyard on 20th Street, NW. (between Constitution Avenue and C Street), between 8:45 a.m. and 5:15 p.m., weekdays. Except as provided in the Board's rules regarding the availability of information (12 CFR 261.8), comments will be available for inspection and copying by members of the public in the Freedom of Information Office, Room MP–500 of the Martin Building, between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Gregory Baer, Managing Senior Counsel (202/452–3236), or Gordon Miller, Attorney (202/452–2534), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Introduction

Section 22(h) of the Federal Reserve Act restricts insider lending by banks, and Regulation O implements section 22(h). 12 U.S.C. 375b; 12 CFR Part 215. Regulation O limits total loans to any one insider and aggregate loans to all insiders to a percentage of the bank's capital and requires that such loans be on non-preferential terms—that is, on the same terms a person not affiliated with the bank would receive.[1] 12 CFR 215.4 (a), (c), and (d). For this purpose, an "insider" means an executive officer, director, or principal shareholder, and loans to an insider include loans to any "related interest" of the insider, including any company controlled by the insider. 12 CFR 215.2(h). Regulation O requires that banks maintain records to document compliance with all these restrictions. 12 CFR 215.8.

On May 3, 1996, the Board proposed amendments to Regulation O to conform its exceptions for executive officers and directors of affiliates of banks to the requirements of section 22(h), as amended by the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act).[2] 61 FR 19,683. On September 30, 1996, in the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA),[3] Congress further amended section 22(h)(8)(B) by expanding the number of restrictions from which the Board could exempt insiders of affiliates, but narrowing the number of insiders of affiliates eligible for such exemptions. In view of the changes in the Board's authority and the comments received from the public concerning the Board's original proposal, the Board is seeking comment on a new proposal to exempt certain insiders of affiliates from Regulation O.

Background

Section 22(h) restricts lending not only to insiders of the bank that is making the loan but also to insiders of the bank's parent bank holding company and any other subsidiary of that bank holding company.[4] Prior to FDICIA, the Board's rules exempted from all the provisions of Regulation O an executive officer of the bank's affiliates (other than the parent bank holding company) who did not participate in major policymaking functions at the bank.[5] 12 CFR 215.2(d) (1992). The Board considered this treatment appropriate for two reasons. First, such persons generally were not considered to be in a position to exert sufficient leverage on the lending-bank to obtain a loan on anything but arm's length terms, in contrast to executive officers of the lending bank itself or its parent. Thus, the Board considered the benefits, in terms of protecting the safety and soundness of bank, of restricting loans to these insiders of affiliates to be small. Second, applying these restrictions to executive officers of affiliates would have required each bank to maintain an updated list of all its affiliates' executive officers and all related interests of these executive officers, and to check all loans against this list. Particularly for a bank in a large bank holding company structure, this effort would have constituted a significant burden not outweighed by any substantial benefit.

However, after the FDICIA amendment, the language of the statute no longer appeared to allow such an

[1] Regulation O also requires prior approval of the bank's board of directors for certain loans to insiders and prohibits overdrafts by executive officers and directors.

[2] Pub. L. 103–325, section 334 (1994).

[3] Pub. L. 104–208, section 2211 (1996).

[4] As amended by the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), section 22(h)(8) provides that "any executive officer, director, or principal shareholder (as the case may be) of any company of which the member bank is a subsidiary, or of any other subsidiary of that company, shall be deemed to be an executive officer, director, or principal shareholder (as the case may be) of the member bank." 12 U.S.C. 375b(8)(A).

[5] Subsection (h) of section 22 was added in 1978, Financial Institutions Regulatory and Interest Rate Control Act of 1978, Pub. L. 95–630, § 104. At that time, subsection (h) was ambiguous about whether an executive officer of a bank's affiliate was required to be treated like an executive officer of the bank itself. The statute provided that an "officer" of a bank included officers of affiliates, but did not similarly address "executive officers." The statute's restrictions on lending by a bank to "executive officers" of the bank therefore did not clearly apply to "executive officers" of affiliates. No such ambiguity existed with respect to directors and principal shareholders of affiliates, who were explicitly treated like their counterparts at the lending bank. In 1980, the Board amended Regulation O to cover insiders of affiliates, but included a regulatory exception for executive officers of affiliates who did not participate in major policymaking functions at the bank.

exception for executive officers of affiliates. Under the amendment, executive officers of affiliates were explicitly treated like executive officers of the bank itself. Still, nothing in the legislative history of FDICIA indicated that Congress intended to invalidate the Board's regulatory exception and extend coverage to all executive officers of affiliates.

In the Riegle Act, Congress addressed this issue by amending section 22(h)(8) again. Congress authorized the Board to make exceptions for executive officers and directors of affiliates, provided that the executive officer or director did not have the authority to participate, and did not participate in, major policymaking functions of the lending bank. The Board's exceptions, however, could not include the provisions of section 22(h)(2), which prohibited lending on preferential terms.[6] Although the legislative history of the provision indicates that it was intended to allow the Board to maintain its existing exception for executive officers, its language did not allow the Board to do so.[7] The Board suggested and supported an amendment to section 22(h) to make its language consistent with its apparent intent.

EGRPRA resolved the situation by dropping the requirement in section 22(h)(8) that the Board's exceptions not include the preferential lending provision. EGRPRA therefore restored the ability of the Board prior to FDICIA to exempt executive officers of a bank's affiliates from all the provisions of section 22(h), and reconfirmed the authority of the Board to make such an exception for directors of a bank's affiliates as well.

Congress further revised section 22(h)(8) in EGRPRA, however, to introduce an additional restriction on the Board's authority to make exceptions. Under the 1996 amendment, an executive officer or director of an affiliate is not eligible for an exception if the assets of the affiliate constitute more than 10 percent of the consolidated assets of the highest-tier holding company controlling the affiliate and the bank making the loan.

Proposal

Accordingly, the Board is proposing amendments to Regulation O that would eliminate its restrictions on a bank's lending to executive officers and directors of affiliates who are not involved in major policymaking functions of the lending bank, if the assets of the affiliate do not exceed 10 percent of the consolidated assets of a company that controls the member bank and such subsidiary and is not controlled by any other company.[8] For the same reasons that it originally exempted executive officers of affiliates, the Board believes that retaining the executive officer exception and expanding it to cover directors would relieve regulatory burden on bank holding companies without increasing the risk of excessive or preferential lending or resultant safety and soundness problems.

Simultaneously with this proposal, the Board has published a final rule elsewhere in today's **Federal Register** to simplify the requirements for board of directors action to exclude an executive officer of an affiliate from participating in major policymaking functions of the lending bank. Under the amended procedures, in order to be exempt from Regulation O, the board of directors of a bank must adopt a resolution listing by name or title the insiders of the bank and its affiliates who are authorized to participate in major policymaking functions of the bank and generally excluding all other persons from participation, and the executive officer must not be included in the resolution and must not actually participate in such major policymaking functions. Previously, the regulation required the executive officer to be excluded from major policymaking functions of the bank by name or title in a resolution of the bank and of the affiliated bank or company where the individual served as an executive officer. 12 CFR 215.2(e)(2)(i).

The supplemental proposal reflects this simplified procedure for excluding executive officers and extends it to directors. The Board adopted the simplified procedures for exempting an executive officer of an affiliate from Regulation O because the lending bank and its board of directors have full and formal control over who participates in the bank's policymaking. For the same reasons, the Board believes that simplifying the requirements to exempt a director of an affiliate would relieve regulatory burden without increasing the risk of evasion of Regulation O.

Regulatory Flexibility Analysis

The Board has concluded after reviewing the proposed regulation that, if adopted, it would not impose a significant economic hardship on small institutions. The proposal does not necessitate the development of sophisticated recordkeeping or reporting systems by small institutions; nor will small institutions need to seek out the expertise of specialized accountants, lawyers, or managers in order to comply with the regulation. The proposal is designed to reduce the burden of Regulation O consistent with the requirements of the underlying statute. The amendment would reduce the regulatory burden for most banks by increasing the number of insiders of affiliates who may be excepted from the insider lending restrictions of Regulation O and substantially eliminating recordkeeping with respect to such individuals. The amendment may increase the regulatory burden for some banks by excluding executive officers of larger affiliates who previously were eligible to be excepted. The Board therefore certifies pursuant to section 605b of the Regulatory Flexibility Act (5 U.S.C. 605b) that the proposal, if adopted, will not have a significantly adverse economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1980 (44 U.S.C. Ch. 35; 5 CFR Part 1320, Appendix A.1), the Board reviewed the supplemental notice of proposed rulemaking under the authority delegated to the Board by the Office of Management and Budget. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0036), Washington, DC 20503,

[6] The provision extending the statute to executive officers and directors of affiliates was moved to a new paragraph (8)(A), and the authority of the Board to make exceptions was placed in a new paragraph (8)(B), which reads as follows: The Board may, by regulation, make exceptions to subparagraph (A), except as that subparagraph makes applicable paragraph (2), for an executive officer or director of a subsidiary of a company that controls the member bank, if that executive officer or director does not have authority to participate, and does not participate, in major policymaking functions of the member bank. 12 U.S.C. 375b(8)(B). "Paragraph (2)" is the prohibition against lending on preferential terms.

[7] The Conference Report stated, "It is not the intent of the Conferees to affect the exemptions that the Federal Reserve Board has already extended to executive officers, but rather to allow the Board the authority to provide appropriate treatment for directors." House Report 103–652, 103d Cong., 2d Sess. at 180 (1994).

[8] The proposed amendment also would retain the current provision in Regulation O that excludes extensions of credit to exempt insiders of affiliates from the recordkeeping requirements of § 215.8 of Regulation O. 12 CFR 215.8. The Board in its original proposal retained the recordkeeping requirement because the lending bank was required to identify loans to exempted insiders of affiliates and their related interests in order to ensure that such loans were not made on preferential terms. Under the proposed amendment, however, the Board's exception would include all prohibitions under section 22(h), including the prohibition on preferential terms, and therefore make recordkeeping for loans to exempt borrowers unnecessary.

with copies of such comments to be sent to Mary M. McLaughlin, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this proposed regulation are found in 12 CFR Part 215. This information is required to evidence compliance with the requirements of section 22(h) of the Federal Reserve Act. The respondents and recordkeepers are for-profit financial institutions, including small businesses. Records must be retained for two years.

The Federal Reserve System may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0036.

The proposed amendments are expected to provide for some reduction in the recordkeeping and disclosure practices of state member banks, and would not affect the banks' reporting requirements to the Federal Reserve System. The recordkeeping and disclosure requirements on extensions of credit by the reporting banks to insiders of the bank and its affiliates are contained in the information collection for the Consolidated Reports of Condition and Income (FFIEC 031–034; OMB No. 7100–0036).

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve System, no issue of confidentiality under the Freedom of Information Act arises.

Comments are invited on: (a) Whether the proposed revision to the collection of information is necessary for the proper performance of the Federal Reserve System's functions, including whether the information has practical utility; (b) ways to enhance the quality, utility, and clarity of the information to be collected; and (c) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

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, and pursuant to the Board's authority under section 22(h) of the Federal Reserve Act (12 U.S.C. 375b), the Board is amending 12 CFR Part 215, subpart A, as follows:

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

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

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

2. Section 215.2 is amended as follows:

a. Paragraph (d) introductory text and paragraphs (d)(1) through (d)(3) are redesignated as paragraph (d)(1) introductory text and paragraphs (d)(1)(i) through (d)(1)(iii), respectively;

b. A new paragraph (d)(2) is added; and

c. Paragraph (e)(2) is revised.

The addition and revisions read as follows:

§ 215.2 Definitions.

* * * * *

(d)(1) * * *

(2) *Exception.* Extensions of credit to a director of an affiliate of a member bank (other than a company that controls the bank) shall not be subject to §§ 215.4, 215.6, and 215.8, provided that—

(i) The board of directors of the member bank adopts a resolution identifying (by name or by title) all persons authorized to participate in major policymaking functions of the member bank, and the director of the affiliate is not included in the resolution and does not actually participate in such major policymaking functions;

(ii) The assets of the affiliate do not constitute more than 10 percent of the consolidated assets of the company that controls the member bank and is not controlled by any other company; and

(iii) The director of the affiliate is not otherwise subject to §§ 215.4, 215.6, and 215.8.

(e) * * *

(2) Extensions of credit to an executive officer of an affiliate of a member bank (other than a company that controls the bank) shall not be subject to §§ 215.4, 215.6, and 215.8, provided that—

(i) The board of directors of the member bank adopts a resolution identifying (by name or by title) all persons authorized to participate in major policymaking functions of the member bank, and the executive officer of the affiliate is not included in the resolution and does not actually participate in such major policymaking functions;

(ii) The assets of the affiliate do not constitute more than 10 percent of the consolidated assets of the company that controls the member bank and is not controlled by any other company; and

(iii) The executive officer of the affiliate is not otherwise subject to §§ 215.4, 215.6, and 215.8.

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By order of the Board of Governors of the Federal Reserve System, November 4, 1996.

William W. Wiles,

Secretary of the Board.

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