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FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Docket No. R-0307]

Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Monetary Control Act of 1980 (Title I of Pub. L. 96-221) provides that a depository institution that maintains transaction accounts or nonpersonal time deposits is entitled to the same discount and borrowing privileges as banks that are members of the Federal Reserve System. In order to implement this provision, the Board has revised its rules relating to the provision of Federal Reserve credit presently contained in Regulation A—Extensions of Credit by Federal Reserve Banks (12 CFR Part 201).

EFFECTIVE DATE: September 1, 1980.

FOR FURTHER INFORMATION CONTACT: Gilbert T. Schwartz, Assistant General Counsel (202/452-3625), Paul S. Pilecki, Attorney (202/452-3281), or John Spitzer, Senior Economist (202/452-2587), Board of Governors of the Federal Reserve System, Washington, D.C.

SUPPLEMENTARY INFORMATION: The Monetary Control Act of 1980 (Title I of Pub. L. 96-221) provides that any depository institution that holds transaction accounts or nonpersonal time deposits subject to Federal Reserve requirements shall be entitled to the same discount and borrowing privileges as member banks. On June 10, 1980, the board solicited public comments on a proposed revision of its rules regarding access to Federal Reserve credit currently provided for in Regulation A—Extensions of Credit by Federal Reserve Banks (12 CFR Part 201) (45 FR 40130). After consideration of the comments received, the Board has determined to adopt the regulation substantially in the form proposed on June 10, 1980. Certain technical amendments have been made to clarify the regulation further.

The regulation provides that Federal Reserve credit may be offered under two basic programs—adjustment and extended. Nonmember depository institutions that are now eligible to borrow from the Federal Reserve, like member banks, generally, are expected to rely on other reasonable available sources of funds before turning to the discount window for assistance. Consequently, institutions that have access to credit programs provided by Federal Home Loan Banks, credit union centrals, the Central Liquidity Facility of the National Credit Union Administration or other specialized industry lenders are expected to seek assistance from these sources prior to requesting credit from the Federal Reserve. A number of comments were received concerning this requirement. While some supported the concept, others indicated that they did not believe it appropriate to require a depository institution to seek funds from other available sources prior to turning to the Federal Reserve for assistance. The Board believes that continuation of this requirement, which applies to member banks, is appropriate. The credit facilities of the Federal Reserve are not intended to supplant other reasonable available sources of funds, and use of Federal Reserve credit facilities is regarded as appropriate only when these other alternatives have been fully used. In instances where depository institutions require funds on short notice to cover immediate cash or reserve needs and are unable to gain timely access to their special industry lenders, the Federal Reserve is prepared to advance funds through its discount window. On these occasions the Federal Reserve will consult and coordinate with the special industry lender as soon as possible. Any such advances made will be viewed as strictly temporary and will be expected to be repaid when access to usual sources of funds is secured, usually the next business day.

The primary form of Federal Reserve lending will continue to be short-term *adjustment* credit. Such credit is available on a short-term basis to assist borrowers in meeting temporary requirements for funds, or to cushion more persistent fund outflows pending an orderly adjustment of the borrower's assets and liabilities. Borrowing is not permitted to take advantage of a favorable spread between the discount rate and other market rates, to add to investment portfolios, or to finance a program of loan expansion.

Interest on Federal Reserve adjustment credit will generally be at the basic discount rate. However, the Federal Reserve retains the option to impose a surcharge in addition to the baic rate. While the discount rate surcharge introduced for a brief period earlier this year applied only to large institutions, any surcharge that may be imposed may apply to all institutions that are eligible to borrow depending upon the length and frequency of the borrowing.

In addition to the short-term adjustment credit program, under the regulation adopted by the Board *extended* credit will be available under certain limited conditions. Regular arrangements for providing seasonal credit to smaller institutions that lack ready access to national money markets or to special industry lenders such as the Federal Home Loan Banks, credit union centrals, or the Central Liquidity Facility will remain in effect. In determining a depository institution's eligibility for seasonal credit, Federal Reserve Bank discount officers will give weight not only to its historical record of seasonally adjusted loan and deposit performance, but will also take into account evidence with regard to changing patterns of recent and prospective needs for funds and liquidity conditions at the institution. The special program for seasonal credit adopted as a temporary measure on April 17, 1980, will be terminated on September 1, 1980, when the new regulation becomes effective.

Extended credit will also be available to meet the needs of a depository institution experiencing difficulties arising from exceptional circumstances or practices involving only that institution, where the provision of such temporary assistance is in the public interest and the needed funds are not available from other sources. In addition, when conditions warrant, extended credit will be available to accommodate the needs of institutions, including those with longer term asset portfolios, that may be experiencing difficulties adjusting to changing money market conditions. These advances may be extended over a longer period than contemplated in the use of adjustment credit, particularly at times of deposit disintermediation. In cases where there may be serious liquidity strains affecting a broad range of depository institutions, Federal Reserve Banks will be prepared to address the problems of particular institutions being affected by the general situation. Before extending credit, however, the Reserve Bank will be expected to consult with other official agencies responsible for supervising the institution affected to determine, among other things, why funds are not available from other sources. Loan agreements will be drawn to establish the conditions under which credit is being advanced and to assure that the borrower adopts an appropriate plan to restore adequate liquidity and to repay the loan in a reasonable period of time.

Advances made under the seasonal credit program will be at the basic discount rate, but, as with adjustment credit, the Federal Reserve reserves the option to impose a surcharge in addition to the basic rate. Depending on market conditions, a special rate above the basic discount rate may be applied to other extended credit.

Section 201.5(d) of Regulation A currently provides that obligations of customers tendered for discount or as collateral for an advance generally may not exceed the limitations of section 5200 of the Revised Statutes (12 U.S.C. 84) applicable to the lending limitations for one obligor. While this restriction is required by law (12 U.S.C. 345) to apply to discounted paper, there is no statutory requirement that it apply to collateral for advances, which is the principal way in which Federal Reserve credit is extended. Accordingly, the Board will no longer require that collateral tendered as security for advances comply with the lending limitations of 12 U.S.C. 84. However, Reserve Banks may, for prudential purposes, impose limitations on the maximum amount of obligations of one customer that may be tendered as collateral for advances.

Pursuant to authority under sections 10(a), 10(b), 13, 13a, and 19 of the Federal Reserve Act (12 U.S.C. §§ 347a, 347b, 343–347, 347c, 347d, 348–352, 374, 374a, and 461), as amended by the Monetary Control Act of 1980 (Title I, Pub. L. 96–221; 94 Stat. 132), effective September 1, 1980, the Board amends Regulation A (12 CFR Part 201) to read as follows:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS

Authority: Sections 10(a), 10(b), 13, 13a, and 19 of the Federal Reserve Act, 12 U.S.C. 347a, 347b, 343 *et seq.*, 347c, 348 *et seq.*, 374, 374a, and 461, Section 7(b) of the International Banking Act of 1978, 12 U.S.C. 347d.

§ 201.1 Authority, scope and purpose.

(a) *Authority and Scope.* This Part is issued under the authority of sections 10(a), 10(b), 13, 13a, and 19 of the Federal Reserve Act (12 U.S.C. §§ 347a, 347b, 343 *et seq.*, 347c, 348 *et seq.*, 374, 374a and 461), other provisions of the Federal Reserve Act, and section 7(b) of the International Banking Act of 1978 (12 U.S.C. § 347d) and relates to extensions of credit by Reserve Banks to depository institutions and others. 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 Regulations D (12 CFR Part 204) in the same manner and to the same extent as member banks.

(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 Reserve Banks. While open market operations are the primary means of affecting the overall supply of reserves, the lending function of the 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. These basic objectives are promoted by influencing the overall volume and cost of credit through actions that affect the volume and cost of reserves to depository institutions. Borrowing by individual depository institutions, at a rate of interest that is adjusted from time to time in accordance with prevailing economic and money market conditions, has a direct impact on the reserve positions of the borrowing institutions and thus on their ability to meet the credit needs of their customers. However, the effects of such borrowing do not remain localized but have an important bearing on overall monetary and credit conditions.

§ 201.2 Definitions.

For purpose of this Part, the following definitions shall apply:

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

(A) An insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)) or a bank that is eligible to apply to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(B) A savings bank or mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(f), (g));

(C) An insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752(7)) or a credit union that is eligible to apply to become an insured credit union under section 201 of such Act (12 U.S.C. 1781);

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

(E) An insured institution as defined in section 401 of the National Housing Act (12 U.S.C. 1724(a)) or an institution that is eligible to apply to become an insured institution under section 403 of such Act (12 U.S.C. 1726).

(2) A financial institution that is not required to maintain reserves under Part 204 of this Title (Regulation D) 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 is not a depository institution.

(b) *"Transaction account and nonpersonal time deposits"* have the meanings specified in Part 204 of this Title (Regulation D).

§ 201.3 Availability and terms.

(a) *Short-term adjustment credit.* Federal Reserve credit is available on a short-term basis to a depository institution under such rules as may be prescribed to assist the institution, to the extent appropriate, in meeting temporary requirements for funds, or to cushion more persistent outflows of funds pending an orderly adjustment of the institution's assets and liabilities. Such credit generally is available only after reasonable alternative sources of funds, 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 have been fully used. Under certain circumstances, a surcharge may be imposed above the basic rate of interest normally charged by Reserve Banks.

(b) *Extended credit*—(1) *Seasonal credit*. Federal Reserve credit is available for periods longer than those permitted under adjustment credit to assist smaller depository institutions in meeting regular needs for funds arising from a combination of expected patterns of movement in their deposits and loans. Seasonal credit is available only if similar assistance is not available from other special industry lenders. Seasonal credit will ordinarily be limited to the amount by which the depository institution's seasonal needs exceed certain percentages, established by the Board of Governors, of the institution's average total deposits in the preceding calendar year. Such credit will be available if the Reserve Bank is satisfied that the institution's qualifying need for funds is seasonal and will persist for at least four weeks. Need for credit at depository institutions will also be given consideration when institutions are experiencing unusual seasonal demands for credit in a period of liquidity strain. To the extent practicable, a depository institution should arrange in advance for seasonal credit for the full period during which such credit is expected to be required. Under certain circumstances, a surcharge may be imposed above the basic rate of interest normally charged by Reserve Banks.

(2) *Other extended credit*. Federal Reserve credit is available 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 involving only a particular depository institution. Exceptional circumstances would include situations where an individual depository institution is experiencing financial strains arising from particular circumstances or practices affecting that 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 established by the Reserve Banks, subject to review and determination by the Board of Governors, may be applied to other extended credit.

(c) *Emergency credit for others*. In unusual and exigent circumstances, a Reserve Bank may, after consultation with the Board, advance credit to individuals, partnerships, and corporations that are not depository institutions if, in the judgment of the Reserve Bank, credit is not available from other sources and failure to obtain such credit would adversely affect the economy. The rate applicable to such credit will be above the highest rate for advances in effect for 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 Board members is required before credit may be extended.

§ 201.4 Advances and discounts.

(a) 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 generally takes the form of an advance.

(b) Reserve Banks may make advances to any depository institution if secured to the satisfaction of the 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 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 the requirements specified in the Federal Reserve Act.

§ 201.5 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 Reserve Bank (1) shall keep itself informed of the general character and amount of the loans and investments of depository institutions with a view of ascertaining whether undue use is being made of 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 Reserve Bank shall require such information as 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 with the permission of the Board of Governors, no depository institution shall act as the medium or agent of another depository institution in receiving Federal Reserve credit.

§ 201.6 Federal Intermediate Credit Banks.

A Reserve Bank may discount for any Federal Intermediate Credit bank (1) agricultural paper, or (2) 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 Reserve Banks. Any paper so discounted shall have a period remaining to maturity at the time of discount of not more than nine months.

By order of the Board of Governors, August 11, 1980.

Theodore E. Allison,

Secretary of the Board.

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12 CFR Part 265

[Docket No. R-0321]

Delegation of Authority to Determine Preemption and to Grant Exemptions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: As permitted by section 11(k) of the Federal Reserve Act, this rule delegates to the Director of the Division of Consumer and Community Affairs the authority to determine whether provisions of the Electronic Fund Transfer Act and Regulation E preempt provisions of state laws that are inconsistent with federal law and are not more protective of the consumer. In addition, the rule delegates to the Director the authority to grant, but not to deny or revoke, exemptions to states if their statutes contain provisions substantially similar to the federal statute and there is adequate provision for enforcement. Because of the complex and time-consuming nature of these decisions, the Board finds that this delegation of authority is appropriate.