

whether an institution is adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized for purposes of prompt corrective action under the Board's prompt corrective action regulation (12 CFR 208.33(b)).

The caption to section 208(f) of the Riegle Act, "Prompt Corrective Action Not Affected," and the legislative history indicate section 208 was not intended to affect the operation of the prompt corrective action system. See S. Rep. No. 103-169, 103d Cong., 1st Sess. 38, 69 (1993). However, the statute does not include "well capitalized" in the list of capital categories not affected. The prompt corrective action system deals primarily with imposing corrective sanctions on institutions that are less than adequately capitalized. Therefore, allowing a bank that is adequately capitalized without regard to section 208 to use the section's capital provisions for purposes of determining whether the bank is well capitalized generally would not affect the application of the prompt corrective action sanctions to the bank.⁶ Other statutes and regulations treat a bank more favorably if it is well capitalized as defined under the prompt corrective action statute, but these provisions are not part of the prompt corrective action system of sanctions. Permitting an institution to be treated as well capitalized for purposes of these other provisions also will not affect the imposition of prompt corrective action sanctions.

There is one provision of the prompt corrective action system that could be affected by treating an institution as well capitalized rather than adequately capitalized. In this regard, if the institution's condition is unsafe and unsound or it is engaging in an unsafe or unsound practice, section 208.33(c) of the Board's prompt corrective action regulation (12 CFR 208.33(c)) authorizes the Board to reclassify a well capitalized institution as adequately capitalized and require an adequately capitalized institution to comply with certain prompt corrective action provisions as if

⁶ It is very unlikely but theoretically possible for a banking organization that is undercapitalized without using the preferential capital treatment in section 208 to become well capitalized if the provisions of section 208 are applied. Since, in the Board's view, section 208 was not intended to affect prompt corrective action sanctions, allowing an undercapitalized institution (without taking into account section 208) to be treated as well capitalized (taking into consideration section 208) would be an inappropriate application of the preferential capital treatment permitted under section 208. Thus, undercapitalized banking organizations will not be able to use the capital provisions of section 208 for purposes of improving their prompt corrective action capital category.

that institution were undercapitalized. Because the text and legislative history of section 208 of the Riegle Act clearly indicate that Congress did not intend to affect prompt corrective action sanctions, the Board believes that the provisions of section 208 do not affect the capital calculation for purposes of reclassifying a bank from one capital category to a lower capital category, regardless of the bank's capital level.

Thus, an institution may use the capital treatment described in section 208 of the Riegle Act when determining whether it is well capitalized for purposes of prompt corrective action as well as for other regulations that reference the well capitalized capital category.⁷ An institution may not use the capital treatment described in section 208 when determining whether it is adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized for purposes of prompt corrective action or other regulations that directly or indirectly reference the prompt corrective action capital categories.⁸ Furthermore, the capital ratios of an institution are to be determined without regard to the preferential capital treatment described in section 208 of the Riegle Act for purposes of being reclassified from one capital category to a lower category as described in the Board's prompt corrective action regulation (12 CFR 208.33(c)).

Section 208(g) of the Riegle Act required that final regulations implementing the provisions of section 208 be promulgated not later than 180 days after the date of the statute's enactment, i.e., by March 22, 1995. In order to meet the spirit of the statute, the preferential capital treatment may be applied by qualifying banking organizations for those transfers of small business obligations with recourse that occurred on or after March 22, 1995, provided certain conditions are met.

⁷ A institution that is subject to a written agreement or capital directive as discussed in the Board's prompt corrective action regulation would not be considered well capitalized. Also, undercapitalized banking organizations will not be able to use the capital provisions of section 208 for purposes of improving their prompt corrective action capital category. (See footnote 6.)

⁸ Under the provisions of section 208, the capital calculation used to determine whether an institution is well capitalized differs from the calculation used to determine whether an institution is adequately capitalized. As a result, it is possible that an institution could be well capitalized using one calculation (i.e., one that considers the preferential capital treatment) and adequately capitalized using the other (i.e., one that is calculated without regard to the preferential capital treatment). In this situation, the institution would be considered well capitalized.

The Board also notes that Section 208(a) of the Riegle Act provides that the accounting principles applicable to the transfer of small business obligations with recourse contained in reports or statements required to be filed with the federal banking agencies by a qualified insured depository institution shall be consistent with GAAP.⁹ The Board, in consultation with the other agencies and under the auspices of the Federal Financial Institutions Examinations Council, intends to ensure that appropriate revisions are made to the Consolidated Reports of Condition and Income (Call Reports) and the Call Report instructions to implement the accounting provisions of section 208.

Regulatory Flexibility Act

This rule reduces the capital requirements on transfers with recourse of small business loans and leases of personal property. Therefore, pursuant to section 605(b) of the Regulatory Flexibility Act, the Board hereby certifies that this rule will not have a significant economic impact on a substantial number of small business entities (in this case, small banking organizations). Accordingly, a regulatory flexibility analysis is not required. The risk-based capital guidelines generally do not apply to bank holding companies with consolidated assets of less than \$150 million; thus, the rule will not affect such companies.

Paperwork Reduction Act and Regulatory Burden

The Board has determined that this rule will not increase the regulatory paperwork burden of banking organizations pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103-325, 108 Stat. 2160) requires that new regulations take effect on the first day of the calendar quarter following publication of the rule, unless the agency determines, for good cause, that the regulation should become effective on a day other than the first day of the next quarter. October 1, 1995 would be

⁹ Transfers of small business obligations with recourse that are consummated at a time when the transferring banking organization does not qualify for the preferential capital treatment or that result in the organization exceeding the 15 percent capital limitation will continue to be reported in accordance with the instructions of the Consolidated Reports of Condition and Income (Call Reports) for sales of assets with recourse. The Call Report instructions generally require banks transferring assets with recourse to continue to report the assets on their balance sheets.