

U.S. Office of Personnel Management.

**Lorraine A. Green,**

*Deputy Director.*

Accordingly, the Office of Personnel Management is proposing to amend 5 CFR part 532 as follows:

## **PART 532—PREVAILING RATE SYSTEMS**

1. The authority citation for part 532 continues to read as follows:

**Authority:** 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. Appendix A to subpart B is amended for New York, New York, by revising the lead agency listing from "DoD" to "VA".

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## **FEDERAL RESERVE SYSTEM**

### **12 CFR Parts 208 and 225**

[Regulations H and Y; Docket No. R-0870]

#### **Capital; Capital Adequacy Guidelines**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) is proposing to amend its capital adequacy guidelines for state member banks and bank holding companies (banking organizations) with regard to the regulatory capital treatment of certain transfers of assets with recourse. This amendment is being proposed to implement section 208 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act). The proposed rule would have the effect of lowering the capital requirement for small business loans and leases on personal property that have been transferred with recourse by qualifying banking organizations.

**DATES:** Comments must be received on or before February 27, 1995.

**ADDRESSES:** Comments, which should refer to Docket No. R-0870, may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Comments also may be delivered to Room B-2222 of the Eccles building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room

MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

#### **FOR FURTHER INFORMATION CONTACT:**

Rhoger H. Pugh, Assistant Director (202/728-5883); Norah Barger, Manager (202/452-2402); Thomas R. Boemio, Supervisory Financial Analyst (202/452-2982); or David A. Elkes, Financial Analyst (202/452-5218), Division of Banking Supervision and Regulation. Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The Board's current regulatory capital guidelines are intended to ensure that banking organizations that transfer assets and retain the credit risk inherent in those assets maintain adequate capital to support that risk. For banks, this is generally accomplished by requiring that assets transferred with recourse continue to be reported on the balance sheet in their regulatory reports. Thus, these assets are included in the calculation of banks' risk-based and leverage capital ratios. For bank holding companies, transfers of assets with recourse are reported in accordance with generally accepted accounting principles (GAAP). GAAP treats most such transactions as sales, allowing the assets to be removed from the balance sheet.<sup>1</sup> For purposes of calculating bank holding companies' risk-based capital ratios, however, assets sold with recourse that have been removed from the balance sheet in accordance with GAAP are included in risk-weighted assets. Accordingly, banking organizations are generally required to maintain capital against the full amount of assets transferred with recourse.

Section 208 of the Riegle Act, which Congress enacted last year, directs the federal banking agencies to revise the current regulatory capital treatment applied to depository institutions engaging in recourse transactions that involve small business obligations.

<sup>1</sup> The GAAP treatment focuses on the transfer of benefits rather than the retention of risk and, thus, allows a transfer of receivables with recourse to be accounted for as a sale if the transferor (1) surrenders control of the future economic benefits of the assets, (2) is able to reasonably estimate its obligations under the recourse provision, and (3) is not obligated to repurchase the assets except pursuant to the recourse provision. In addition, the transferor must establish a separate liability account equal to the estimated probable losses under the recourse provision (GAAP recourse liability account).

Specifically, the Riegle Act states that a qualifying insured depository institution that sells small business loans and leases on personal property with recourse need include only the amount of retained recourse in its asset base when calculating its capital ratios, provided two conditions are met. First, the transaction must be treated as a sale under GAAP and, second, the depository institution must establish a non-capital reserve sufficient to meet the institution's reasonably estimated liability under the recourse arrangement. The aggregate amount of recourse retained in accordance with the provisions of the Act may not exceed 15 percent of an institution's total risk-based capital or a greater amount established by the appropriate federal banking agency. The Act also states that the preferential capital treatment set forth in section 208 is not to be applied for purposes of determining an institution's status under the prompt corrective action statute (section 38(b) of the Federal Deposit Insurance Act).

The Riegle Act defines a small business as a business that meets the criteria for a small business concern established by the Small Business Administration under section 3(a) of the Small Business Act.<sup>2</sup> The Riegle Act also defines a qualifying institution as one that is well capitalized or, with the approval of the appropriate federal banking agency, adequately capitalized, as these terms are set forth in the prompt corrective action statute. For purposes of determining whether an institution is qualifying, its capital ratios must be calculated without regard to the preferential capital treatment the Act sets forth for small business obligations.

##### **Proposal**

To implement the requirements of section 208 of the Riegle Act, the Board is proposing to amend its risk-based and leverage capital requirements for state member banks. While section 208 of the Act specifically applies only to insured depository institutions, and not to bank holding companies, the Board is also proposing to amend its risk-based capital guidelines for bank holding companies to reflect the requirements

<sup>2</sup> See 15 U.S.C. 631 et seq. The Small Business Administration has enacted regulations setting forth the criteria for a small business concern at 13 CFR 121.101-121.2106. For most industry categories, the regulation defines a small business concern as one with 500 or fewer employees. For some industry categories, a small business concern is defined in terms of a greater or lesser number of employees or in terms of a specified threshold of annual receipts.