AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

three years from the date of the acquisition, subject to extension by the appropriate Federal banking agency for good cause;

(4)(i) An endorsement or guarantee for the protection of a bank of any loan or other asset previously acquired by the bank in good faith; or

(ii) Any indebtedness to a bank for the purpose of protecting the bank against loss or of giving financial assistance to it;

(5) Indebtedness of $15,000 or less arising by reason of any general arrangement by which a bank:

(i) Acquires charge or time credit accounts; or

(ii) Makes payments to or on behalf of participants in a bank credit card plan, check credit plan, or similar open-end credit plan, provided:

(A) The indebtedness does not involve prior individual clearance or approval by the bank other than for the purposes of determining authority to participate in the arrangement and compliance with any dollar limit under the arrangement; and

(B) The indebtedness is incurred under terms that are not more favorable than those offered to the general public;

(6) Indebtedness of $5,000 or less arising by reason of an interest-bearing overdraft credit plan of the type specified in §215.4(e) of this part; or

(7) A discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, without recourse.

(c) Non-interest-bearing deposits to the credit of a bank are not considered loans, advances, or extensions of credit to the bank of deposit; nor is the giving of immediate credit to a bank upon uncollected items received in the ordinary course of business considered to be a loan, advance or extension of credit to the depositing bank.

(d) For purposes of §215.4 of this part, an extension of credit by a member bank is considered to have been made at the time the bank enters into a binding commitment to make the extension of credit.

(e) A participation without recourse is considered to be an extension of credit by the participating bank, not by the originating bank.

(f) *Tangible economic benefit rule*—(1) *In general.* An extension of credit is considered made to an insider to the extent that the proceeds are transferred to the insider or are used for the tangible economic benefit of the insider.

(2) *Exception.* An extension of credit is not considered made to an insider under paragraph (f)(1) of this section if:

(i) The credit is extended on terms that would satisfy the standard set forth in §215.4(a) of this part for extensions of credit to insiders; and

(ii) The proceeds of the extension of credit are used in a bona fide transaction to acquire property, goods, or services from the insider.

[Reg. O, 59 FR 8837, Feb. 24, 1994; 59 FR 37930, July 26, 1994; 63 FR 58621, Nov. 2, 1998]

§ 215.4 General prohibitions.

(a) *Terms and creditworthiness*—(1) *In general.* No member bank may extend credit to any insider of the bank or insider of its affiliates unless the extension of credit:

(i) Is made on substantially the same terms (including interest rates and collateral) as, and following credit underwriting procedures that are not less stringent than, those prevailing at the time for comparable transactions by the bank with other persons that are not covered by this part and who are not employed by the bank; and

(ii) Does not involve more than the normal risk of repayment or present other unfavorable features.

(2) *Exception.* Nothing in this paragraph (a) or paragraph (e)(2)(ii) of this section 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.

(b) *Prior approval.* (1) No member bank may extend credit (which term includes granting a line of credit) to any insider of the bank or insider of its affiliates in an amount that, when aggregated with the amount of all other extensions of credit to that person and to all related interests of that person, exceeds the higher of $25,000 or 5 percent of the member bank's unimpaired capital and unimpaired surplus, unless:

(i) The extension of credit has been approved in advance by a majority of the entire board of directors of that bank; and

(ii) The interested party has abstained from participating directly or indirectly in the voting.

(2) In no event may a member bank extend credit to any insider of the bank or insider of its affiliates in an amount that, when aggregated with all other extensions of credit to that person, and all related interests of that person, exceeds $500,000, except by complying with the requirements of this paragraph (b).

(3) Approval by the board of directors under paragraphs (b)(1) and (b)(2) of this section is not required for an extension of credit that is made pursuant to a line of credit that was approved under paragraph (b)(1) of this section within 14 months of the date of the extension of credit. The extension of credit must also be in compliance with the requirements of §215.4(a) of this part.

(4) Participation in the discussion, or any attempt to influence the voting, by the board of directors regarding an extension of credit constitutes indirect participation in the voting by the board of directors on an extension of credit.

(c) *Individual lending limit*— No member bank may extend credit to any insider of the bank or insider of its affiliates in an amount that, when aggregated with the amount of all other extensions of credit by the member bank to that person and to all related interests of that person, exceeds the lending limit of the member bank specified in §215.2(i) of this part. This prohibition does not apply to an extension of credit by a member bank to a company of which the member bank is a subsidiary or to any other subsidiary of that company.

(d) *Aggregate lending limit* —(1) *General limit.* A member bank may not extend credit to any insider of the bank or insider of its affiliates unless the extension of credit is in an amount that, when aggregated with the amount of all outstanding extensions of credit by that bank to all such insiders, does not exceed the bank's unimpaired capital and unimpaired surplus (as defined in §215.2(i) of this part).

(2) *Member banks with deposits of less than $100,000,000.* (i) A member bank with deposits of less than $100,000,000 may by an annual resolution of its board of directors increase the general limit specified in paragraph (d)(1) of this section to a level not to exceed two times the bank's unimpaired capital and unimpaired surplus, if:

(A) The board of directors determines that such higher limit is consistent with prudent, safe, and sound banking practices in light of the bank's experience in lending to its insiders and is necessary to attract or retain directors or to prevent restricting the availability of credit in small communities;

(B) The resolution sets forth the facts and reasoning on which the board of directors bases the finding, including the amount of the bank's lending to its insiders as a percentage of the bank's unimpaired capital and unimpaired surplus as of the date of the resolution;

(C) The bank meets or exceeds, on a fully-phased in basis, all applicable capital requirements established by the appropriate Federal banking agency; and

(D) The bank received a satisfactory composite rating in its most recent report of examination.

(ii) If a member bank has adopted a resolution authorizing a higher limit pursuant to paragraph (d)(2)(i) of this section and subsequently fails to meet the requirements of paragraph (d)(2)(i)(C) or (d)(2)(i)(D) of this section, the member bank shall not extend any additional credit (including a renewal of any existing extension of credit) to any insider of the bank or its affiliates unless such extension or renewal is consistent with the general limit in paragraph (d)(1) of this section.

(3) *Exceptions.* (i) The general limit specified in paragraph (d)(1) of this section does not apply to the following:

(A) Extensions of credit secured by a perfected security interest in bonds, notes, certificates of indebtedness, or Treasury bills of the United States or in other such obligations fully guaranteed as to principal and interest by the United States;

(B) Extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission or establishment of the United States or any corporation wholly owned directly or indirectly by the United States;

(C) Extensions of credit secured by a perfected security interest in a segregated deposit account in the lending bank; or

(D) Extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper that is acquired from an insider and carries a full or partial recourse endorsement or guarantee by the insider, provided that:

(*1*) The financial condition of each maker of such consumer paper is reasonably documented in the bank's files or known to its officers;

(*2*) An officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of the obligation and not upon any endorsement or guarantee by the insider; and

(*3*) The maker of the instrument is not an insider.

(ii) The exceptions in paragraphs (d)(3)(i)(A) through (d)(3)(i)(C) of this section apply only to the amounts of such extensions of credit that are secured in the manner described therein.

(e) *Overdrafts.* (1) No member bank may pay an overdraft of an executive officer or director of the bank or executive officer or director of its affiliates[3] on an account at the bank, unless the payment of funds is made in accordance with:

(i) A written, preauthorized, interest-bearing extension of credit plan that specifies a method of repayment; or

(ii) A written, preauthorized transfer of funds from another account of the account holder at the bank.

(2) The prohibition in paragraph (e)(1) of this section does not apply to payment of inadvertent overdrafts on an account in an aggregate amount of $1,000 or less, provided:

(i) The account is not overdrawn for more than 5 business days; and

(ii) The member bank charges the executive officer or director the same fee charged any other customer of the bank in similar circumstances.

[Reg. O, 59 FR 8837, Feb. 24, 1994; 59 FR 37930, July 26, 1994, as amended at 61 FR 57770, Nov. 8, 1996; 62 FR 13298, Mar. 20, 1997]

§ 215.5 Additional restrictions on loans to executive officers of member banks.

The following restrictions on extensions of credit by a member bank to any of its executive officers apply in addition to any restrictions on extensions of credit by a member bank to insiders of itself or its affiliates set forth elsewhere in this part. The restrictions of this section apply only to executive officers of the member bank and not to executive officers of its affiliates.

(a) No member bank may extend credit to any of its executive officers, and no executive officer of a member bank shall borrow from or otherwise become indebted to the bank, except in the amounts, for the purposes, and upon the conditions specified in paragraphs (c) and (d) of this section.

(b) No member bank may extend credit in an aggregate amount greater than the amount permitted in paragraph (c)(4) of this section to a partnership in which one or more of the bank's executive officers are partners and, either individually or together, hold a majority interest. For the purposes of paragraph (c)(4) of this section, the

[3] This prohibition does not apply to the payment by a member bank of an overdraft of a principal shareholder of the member bank, unless the principal shareholder is also an executive officer or director. This prohibition also does not apply to the payment by a member bank of an overdraft of a related interest of an executive officer, director, or principal shareholder of the member bank or executive officer, director, or principal shareholder of its affiliates.