

TITLE 12 - BANKS AND BANKING
CHAPTER 3 - FEDERAL RESERVE SYSTEM
SUBCHAPTER X - POWERS AND DUTIES OF MEMBER BANKS

§ 375b. Extensions of credit to executive officers, directors, and principal shareholders of member banks

(1) In general

No member bank may extend credit to any of its executive officers, directors, or principal shareholders, or to any related interest of such a person, except to the extent permitted under paragraphs (2), (3), (4), (5), and (6).

(2) Preferential terms prohibited

(A) In general

A member bank may extend credit to its executive officers, directors, or principal shareholders, or to any related interest of such a person, only if the extension of credit—

(i) is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions by the bank with persons who are not executive officers, directors, principal shareholders, or employees of the bank;

(ii) does not involve more than the normal risk of repayment or present other unfavorable features; and

(iii) the bank follows credit underwriting procedures that are not less stringent than those applicable to comparable transactions by the bank with persons who are not executive officers, directors, principal shareholders, or employees of the bank.

(B) Exception

Nothing in this paragraph 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

(ii) that does not give preference to any officer, director, or principal shareholder of the member bank, or to any related interest of such person, over other employees of the member bank.

(3) Prior approval required

A member bank may extend credit to a person described in paragraph (1) in an amount that, when aggregated with the amount of all other outstanding extensions of credit by that bank to each such person and that person's related interests, would exceed an amount prescribed by regulation of the appropriate Federal banking agency (as defined in section 1813 of this title) only if—

(A) the extension of credit has been approved in advance by a majority vote of that bank's entire board of directors; and

(B) the interested party has abstained from participating, directly or indirectly, in the deliberations or voting on the extension of credit.

(4) Aggregate limit on extensions of credit to any executive officer, director, or principal shareholder

A member bank may extend credit to any executive officer, director, or principal shareholder, or to any related interest of such a person, only if the extension of credit is in an amount that, when aggregated with the amount of all outstanding extensions of credit by that bank to that person and that person's related interests, would not exceed the limits on loans to a single borrower established by section 84 of this title. For purposes of this paragraph, section 84 of this title shall be deemed to apply to a State member bank as if the State member bank were a national banking association.

(5) Aggregate limit on extensions of credit to all executive officers, directors, and principal shareholders

(A) In general

A member bank may extend credit to any executive officer, director, or principal shareholder, or to any related interest of such a person, if the extension of credit is in an amount that, when aggregated with the amount of all outstanding extensions of credit by that bank to its executive officers, directors, principal shareholders, and those persons' related interests would not exceed the bank's unimpaired capital and unimpaired surplus.

(B) More stringent limit authorized

The Board may, by regulation, prescribe a limit that is more stringent than that contained in subparagraph (A).

(C) Board may make exceptions for certain banks

The Board may, by regulation, make exceptions to subparagraph (A) for member banks with less than \$100,000,000 in deposits if the Board determines that the exceptions are important to avoid constricting the availability of credit in small communities or to attract directors to such banks. In no case may the aggregate amount of all outstanding extensions of credit to a bank's executive officers, directors, principal shareholders, and those persons' related interests be more than 2 times the bank's unimpaired capital and unimpaired surplus.

(6) Overdrafts by executive officers and directors prohibited

(A) In general

If any executive officer or director has an account at the member bank, the bank may not pay on behalf of that person an amount exceeding the funds on deposit in the account.

(B) Exceptions

Subparagraph (A) does not prohibit a member bank from paying funds in accordance with—

- (i) a written preauthorized, interest-bearing extension of credit specifying a method of repayment; or
- (ii) a written preauthorized transfer of funds from another account of the executive officer or director at that bank.

(7) Prohibition on knowingly receiving unauthorized extension of credit

No executive officer, director, or principal shareholder shall knowingly receive (or knowingly permit any of that person's related interests to receive) from a member bank, directly or indirectly, any extension of credit not authorized under this section.

(8) Executive officer, director, or principal shareholder of certain affiliates treated as executive officer, director, or principal shareholder of member bank

(A) In general

For purposes of this section, 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.

(B) Exception

The Board may, by regulation, make exceptions to subparagraph (A) for any executive officer or director of a subsidiary of a company that controls the member bank if—

- (i) the executive officer or director does not have authority to participate, and does not participate, in major policymaking functions of the member bank; and

(ii) the assets of such subsidiary 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).

(9) Definitions

For purposes of this section:

(A) Company

(i) In general

Except as provided in clause (ii), the term “company” means any corporation, partnership, business or other trust, association, joint venture, pool syndicate, sole proprietorship, unincorporated organization, or other business entity.

(ii) Exceptions

The term “company” does not include—

- (I) an insured depository institution (as defined in section 1813 of this title); or
- (II) a corporation the majority of the shares of which are owned by the United States or by any State.

(B) Control

A person controls a company or bank if that person, directly or indirectly, or acting through or in concert with 1 or more persons—

- (i) owns, controls, or has the power to vote 25 percent or more of any class of the company’s voting securities;
- (ii) controls in any manner the election of a majority of the company’s directors; or
- (iii) has the power to exercise a controlling influence over the company’s management or policies.

(C) Executive officer

A person is an “executive officer” of a company or bank if that person participates or has authority to participate (other than as a director) in major policymaking functions of the company or bank.

(D) Extension of credit

(i) In general

A member bank extends credit by making or renewing any loan, granting a line of credit, or entering into any similar transaction as a result of which a person becomes obligated (directly or indirectly, or by any means whatsoever) to pay money or its equivalent to the bank.

(ii) Exceptions

The Board may, by regulation, make exceptions to clause (i) for transactions that the Board determines pose minimal risk.

(E) Member bank

The term “member bank” includes any subsidiary of a member bank.

(F) Principal shareholder

The term “principal shareholder”—

- (i) means any person that directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 percent of any class of voting securities of a member bank or company; and
- (ii) does not include a company of which a member bank is a subsidiary.

(G) Related interest

A “related interest” of a person is—

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

- (i) any company controlled by that person; and
- (ii) any political or campaign committee that is controlled by that person or the funds or services of which will benefit that person.

(H) Subsidiary

The term “subsidiary” has the same meaning as in section 1841 of this title.

(10) Board’s rulemaking authority

The Board of Governors of the Federal Reserve System may prescribe such regulations, including definitions of terms, as it determines to be necessary to effectuate the purposes and prevent evasions of this section.

(Dec. 23, 1913, ch. 6, § 22(h), as added Pub. L. 95–630, title I, § 104, Nov. 10, 1978, 92 Stat. 3644; amended Pub. L. 97–320, title IV, §§ 410(e), 422, Oct. 15, 1982, 96 Stat. 1520, 1522; Pub. L. 102–242, title III, § 306(a)–(h), Dec. 19, 1991, 105 Stat. 2355, 2357–2359; Pub. L. 102–550, title IX, § 955, title XVI, § 1605(a)(10), Oct. 28, 1992, 106 Stat. 3895, 4086; Pub. L. 103–325, title III, § 334(b), Sept. 23, 1994, 108 Stat. 2233; Pub. L. 104–208, div. A, title II, § 2211, Sept. 30, 1996, 110 Stat. 3009–410.)

Prior Provisions

A prior section 22(h) of act Dec. 23, 1913, ch. 6, as added June 19, 1934, ch. 653, § 3, 48 Stat. 1107, was classified to section 596 of this title, prior to repeal by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948.

Amendments

1996—Par. (2)(A). Pub. L. 104–208, § 2211(a)(1), (2), designated existing provisions as subpar. (A), inserted heading, redesignated former subpars. (A) to (C) as cls. (i) to (iii), respectively, and adjusted margins.

Par. (2)(B). Pub. L. 104–208, § 2211(a)(3), added subpar. (B). Former subpar. (B) redesignated cl. (ii) of subpar. (A).

Par. (2)(C). Pub. L. 104–208, § 2211(a)(1), redesignated subpar. (C) as cl. (iii) of subpar. (A).

Par. (8)(B). Pub. L. 104–208, § 2211(b), amended heading and text of subpar. (B) generally. Prior to amendment, text read 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.”

1994—Par. (8). Pub. L. 103–325 designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

1992—Par. (6)(B)(i). Pub. L. 102–550, § 1605(a)(10), substituted “or” for “and” at end.

Par. (9)(D). Pub. L. 102–550, § 955(a), designated existing provisions as cl. (i), inserted heading, and added cl. (ii).

Par. (9)(F). Pub. L. 102–550, § 955(b), designated portion of existing provisions as cl. (i), realigned margin, substituted “; and” for period at end, and added cl. (ii).

1991—Pub. L. 102–242, § 306(a), amended section generally, substituting provisions relating to extensions of credit to executive officers, directors, and principal shareholders of member banks for provisions relating to prohibitions respecting loans and extensions of credit to executive officers and directors of banks, political or campaign committees, etc.

Par. (1). Pub. L. 102–242, § 306(d)(2), inserted “(5),” after “(4),”.

Par. (2)(C). Pub. L. 102–242, § 306(b), added subpar. (C).

Par. (4). Pub. L. 102–242, § 306(c), inserted “, director,” after “executive officer” in heading and text.

Par. (5). Pub. L. 102–242, § 306(d)(1), added par. (5).

Par. (7). Pub. L. 102–242, § 306(e), added par. (7).

Par. (8). Pub. L. 102–242, § 306(f), struck out “bank holding” before “company of which the member”.

Par. (9)(E). Pub. L. 102–242, § 306(g), added subpar. (E).

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

Par. (9)(F). Pub. L. 102–242, § 306(h), struck out last sentence of subpar. (F) which read as follows: “For purposes of paragraph (4), if a member bank has its main banking office in a city, town, or village with a population of less than 30,000, the preceding sentence shall apply with ‘18 percent’ substituted for ‘10 percent’.”

1982—Par. (2). Pub. L. 97–320, § 422, substituted “an amount prescribed in a regulation of the appropriate Federal banking agency” for “\$25,000”.

Par. (6)(C) to (F). Pub. L. 97–320, § 410(e), redesignated subpars. (D) to (G) as (C) to (F), respectively. Former subpar. (C), relating to definition of term “extension of credit”, was struck out.

Effective Date of 1992 Amendment

Amendment by section 1605(a)(10) of Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609 of Pub. L. 102–550, set out as a note under section 191 of this title.

Effective Date of 1991 Amendment

Section 306(l) of Pub. L. 102–242 provided that: “The amendments made by this section [amending this section and sections 1468, 1828, and 1972 of this title] shall become effective upon the earlier of—

“(1) the date on which final regulations under subsection (m)(1) [set out below] become effective [May 18, 1992, see 57 F.R. 22417]; or

“(2) 150 days after the date of enactment of this Act [Dec. 19, 1991].”

Effective Date

Section 2101 of Pub. L. 95–630 provided that: “Except as otherwise provided herein, this Act [see Short Title of 1978 Amendment note set out under section 226 of this title] shall take effect upon the expiration of one hundred and twenty days after the date of its enactment [Nov. 10, 1978].”

Regulations

Section 306(m) of Pub. L. 102–242 provided that:

“(1) In general.—The Board of Governors of the Federal Reserve System shall, not later than 120 days after the date of enactment of this Act [Dec. 19, 1991], promulgate final regulations to implement the amendments made by this section [amending this section and sections 1468, 1828, and 1972 of this title], other than the amendments made by subsections (i) and (k) [amending sections 1468 and 1828 of this title].

“(2) Limiting extensions of credit to executive officers.—The Federal Deposit Insurance Corporation and Director of the Office of Thrift Supervision shall each, not later than 120 days after the date of enactment of this Act, promulgate final regulations prescribing the maximum amount that a nonmember insured bank or insured savings association (as the case may be) may lend under section 22(g)(4) of the Federal Reserve Act [12 U.S.C. 375a (4)], as made applicable to those institutions by subsections (k) and (i), respectively.”

Existing Transactions Not Affected by 1991 Amendments

Section 306(n) of Pub. L. 102–242 provided that: “The amendments made by this section [amending this section and sections 1468, 1828, and 1972 of this title] do not affect the validity of any extension of credit or other transaction lawfully entered into on or before the effective date of those amendments [see Effective Date of 1991 Amendment note above].”

Reporting of Credit by Executive Officers and Directors

Section 306(o) of Pub. L. 102–242 provided that: “An executive officer or director of an insured depository institution, a bank holding company, or a savings and loan holding company, the shares of which are not publicly traded, shall report annually to the board of directors of the institution or holding company the outstanding amount of any credit that was extended to such executive officer or director and that is secured by shares of the institution or holding company.”